

**Exhibit Z**

**Redacted**

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UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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Michelle Simha, as  
Trustee for the  
Next-of-Kin of Noah  
Leopold,

Plaintiff,

Civil File No.  
24-CV-01097-JRT-DTS

vs.

Mayo Clinic,

Defendant.  
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DEPOSITION OF DANIELLE FAY

Volume I, Pages 1 - 142

August 13, 2024

(The following is the deposition of Danielle  
Fay, taken pursuant to Notice of Taking  
Deposition, via video, at Mayo Clinic, Legal  
Department, 100 2nd Street SW, Rochester,  
Minnesota, commencing at approximately 2:22  
p.m., August 13, 2024.)

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<p>1 APPEARANCES:</p> <p>2 On Behalf of the Plaintiff:</p> <p>3 Brandon Thompson</p> <p>4 CIRESI CONLIN LLP</p> <p>5 225 South Sixth Street</p> <p>6 Suite 4600</p> <p>7 Minneapolis, Minnesota 55402</p> <p>8 On Behalf of the Defendant:</p> <p>9 Andrew Brantingham</p> <p>10 DORSEY &amp; WHITNEY LLP</p> <p>11 50 South Sixth Street</p> <p>12 Suite 1500</p> <p>13 Minneapolis, Minnesota 55402</p> <p>14 ALSO PRESENT:</p> <p>15 Ron Huber, Videographer</p> <p>16 Anna C. Messerly, Ciresi Conlin</p> <p>17 Maggie Palmisano, Ciresi Conlin (via Zoom)</p> <p>18 Michelle Simha (via Zoom)</p> <p>19 Norman Leopold (via Zoom)</p> <p>20 Karen Leopold (via Zoom)</p> <p>21 Jenna Shulman (via Zoom)</p> <p>22 EXAMINATION INDEX</p> <p>23 WITNESS EXAMINED BY PAGE</p> <p>24 Danielle Fay Mr. Thompson 7</p> <p>25 Mr. Brantingham 115</p> <p>Mr. Thompson 123</p>	<p>1 what I intend to do about that. I have made my</p> <p>2 position clear. The law is clear. The cases I</p> <p>3 sent are clear. I mean what -- how could you</p> <p>4 possibly disagree with the law? The -- the</p> <p>5 quotes from the cases --</p> <p>6 MR. BRANTINGHAM: I can answer the</p> <p>7 question if you want me to.</p> <p>8 MR. THOMPSON: Please.</p> <p>9 MR. BRANTINGHAM: So the Hall case you</p> <p>10 cite from the Eastern District of Pennsylvania</p> <p>11 is well known in the bar as, frankly, an</p> <p>12 outlier. I can send you a bunch of cases that</p> <p>13 say it's wrong and criticize it as an outlier.</p> <p>14 It's not in this jurisdiction. It doesn't</p> <p>15 govern us.</p> <p>16 MR. THOMPSON: I sent you an Eighth</p> <p>17 Circuit Case.</p> <p>18 MR. BRANTINGHAM: The Eighth Circuit is</p> <p>19 from the Eastern District of Missouri, and it,</p> <p>20 too, does not govern in this district, and I</p> <p>21 don't think it says that counsel cannot talk to</p> <p>22 their clients on a break from a deposition.</p> <p>23 People do that in every deposition I've been in,</p> <p>24 counsel talk to their clients on break.</p> <p>25 MR. THOMPSON: Not in depositions where</p>
Page 3	Page 5
<p>1 PROCEEDINGS</p> <p>2 MR. BRANTINGHAM: I wanted to take up</p> <p>3 the issue you emailed me about a couple of</p> <p>4 minutes ago, counsel, regarding conferring with</p> <p>5 witnesses during depositions and so forth. I</p> <p>6 sent you an email back, I don't know if you had</p> <p>7 the chance to review it.</p> <p>8 MR. THOMPSON: Nope.</p> <p>9 MR. BRANTINGHAM: The simple issue is I</p> <p>10 think you're wrong on the law that governs here.</p> <p>11 I think counsel are absolutely entitled to talk</p> <p>12 to their clients on breaks during depositions.</p> <p>13 I'm not interested in the -- the coaching part</p> <p>14 of it. I'm not interested in the discussion of</p> <p>15 what happens on the record. I know the rules.</p> <p>16 You know the rules.</p> <p>17 If your position is that I'm not</p> <p>18 allowed to talk to my clients and have a</p> <p>19 privileged conversation on deposition breaks,</p> <p>20 then we need to raise it with magistrate right</p> <p>21 now and get a ruling on that. If that's -- if</p> <p>22 you don't care to press that position, fine.</p> <p>23 But I -- I don't want to proceed without clarity</p> <p>24 on what you intend to do about that.</p> <p>25 MR. THOMPSON: I don't have to tell you</p>	<p>1 you've taken my clients do I go and talk to my</p> <p>2 clients about the questions that you were</p> <p>3 asking, and then come back and try to</p> <p>4 rehabilitate their testimony based on</p> <p>5 instructions that I've given them, --</p> <p>6 MR. BRANTINGHAM: Okay.</p> <p>7 MR. THOMPSON: Just hold on.</p> <p>8 MR. BRANTINGHAM: Sure. Go ahead.</p> <p>9 MR. THOMPSON: Hold on. Hold on.</p> <p>10 MR. BRANTINGHAM: Sure.</p> <p>11 MR. THOMPSON: -- which is what I think</p> <p>12 happened. And we don't have to fight about it.</p> <p>13 You -- we have a disagreement over what the law</p> <p>14 allows. We'll see what happens in the</p> <p>15 depositions, and if there's a remedy that I feel</p> <p>16 like I need to take up, then I'm going to do</p> <p>17 that.</p> <p>18 MR. BRANTINGHAM: Okay. Well then I</p> <p>19 think we need to call the judge. I think -- I</p> <p>20 want a ruling on it now. I don't want to</p> <p>21 proceed based on this goofy notion that you have</p> <p>22 that something is going to happen down the road</p> <p>23 and you're going to say all this was done wrong.</p> <p>24 Let's take it up.</p> <p>25 MR. THOMPSON: If you want to get the</p>

2 (Pages 2 to 5)

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<p>1 judge on the phone, that's fine.  2 MR. BRANTINGHAM: Okay. Let's do it.  3 THE REPORTER: Off the record.  4 (Recess taken from 2:25 p.m. to 2:31  5 p.m.)  6  7  8  9  10  11  12  13  14  15  16  17  18  19  20  21  22  23  24  25</p>	<p>1 we get a clean record and we're on the same page  2 with one another. Okay?  3 <b>A. Sure.</b>  4 Q. The first thing is keep your voice up.  5 You're a really quiet talker. Nikki over here  6 is trying to take down everything that you're  7 saying, and it will make her job a lot easier if  8 you try to keep your voice up. Okay?  9 <b>A. Okay.</b>  10 Q. All right. Let's try really hard not  11 to talk over one another. That's another thing  12 that makes her job tough.  13 <b>A. Sure.</b>  14 Q. Fair?  15 Verbal answers like yeses and nos are  16 good. Shakes or nods without an accompanying  17 yes or no are bad. The video will pick it up,  18 but the court reporter won't. Okay?  19 <b>A. Sure.</b>  20 Q. All right. Will you let me know if any  21 of my questions are unclear to you in any way?  22 <b>A. Yes.</b>  23 Q. All right. Perfect.  24 What did you do to prepare for your  25 deposition?</p>
Page 7	Page 9
<p>1 THE VIDEOGRAPHER: We're on the record.  2 Today is August 13th, 2024. The time is  3 2:30 p.m. Today's case caption is Simha versus  4 Mayo Clinic. The witness for today's deposition  5 is Danielle Fay.  6 At this time the court reporter will  7 swear the witness.  8 (Witness sworn.)  9 DANIELLE FAY,  10 called as a witness, being first duly  11 sworn, was examined and testified as  12 follows:  13 EXAMINATION  14 BY MR. THOMPSON:  15 Q. Hello.  16 <b>A. Hi.</b>  17 Q. How are you?  18 <b>A. Good. How are you?</b>  19 Q. Super pumped to have your deposition  20 taken?  21 <b>A. Not particularly.</b>  22 Q. I assume you've never done this before.  23 <b>A. No, I have not.</b>  24 Q. All right. So first let's do a couple  25 of quick ground rules to try to make sure that</p>	<p>1 <b>A. I reviewed the OCS data from the run</b>  2 <b>and went over my guidelines and information that</b>  3 <b>we have for the run.</b>  4 Q. When you say "guidelines," what do you  5 mean by that?  6 <b>A. We have a guideline that we will</b>  7 <b>follow --</b>  8 <b>(Mr. Thompson showing document.)</b>  9 <b>Yes, that one.</b>  10 Q. This big 'ol thing that says "Mayo  11 Clinic OCS Heart Reference Guide?"  12 <b>A. Yes.</b>  13 Q. Great.  14 There's a lot of pages to this thing.  15 <b>A. There is.</b>  16 Q. Did you look through the whole thing as  17 part of preparing for your deposition?  18 <b>A. Not the whole thing. I mainly went</b>  19 <b>through the parts that we have as part of our</b>  20 <b>Mayo document.</b>  21 Q. As opposed to all the technical data  22 from the TransMedics Manual that's in the back  23 of this document.  24 <b>A. Yes.</b>  25 Q. Yep. Okay.</p>

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<p style="text-align: right;">Page 10</p> <p>1 When is the last time you looked at</p> <p>2 this reference guide?</p> <p>3 <b>A. This past weekend.</b></p> <p>4 Q. Okay. Is this reference guide</p> <p>5 something that you were provided as part of your</p> <p>6 training?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. When did you get -- I don't know if --</p> <p>9 Is it certified, is that the right</p> <p>10 word, to be an OCS specialist?</p> <p>11 <b>A. We went out for training about two</b></p> <p>12 <b>years ago, a little over two years ago.</b></p> <p>13 Q. Okay. I'm going to get --</p> <p>14 I'm getting myself off track a little</p> <p>15 bit. We'll get back to that in just a second.</p> <p>16 <b>A. Sure.</b></p> <p>17 Q. I want to make sure I know everything</p> <p>18 that you looked at to prepare for your</p> <p>19 deposition.</p> <p>20 There's an Excel spreadsheet that has</p> <p>21 like the flow data and some of the vital signs</p> <p>22 from the OCS run. Is that what you were</p> <p>23 referring to with the first thing that you</p> <p>24 reviewed?</p> <p>25 <b>A. Yes.</b></p>	<p style="text-align: right;">Page 12</p> <p>1 bunch of stuff, and Mayo gets to ask me to</p> <p>2 provide them with a bunch of stuff. They</p> <p>3 provided tens of thousands of pages of</p> <p>4 documents, and one of the things they provided</p> <p>5 was some text messages that you're on.</p> <p>6 <b>A. Uh-huh.</b></p> <p>7 Q. Did those text messages come from your</p> <p>8 phone?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. Tell me how you went about finding</p> <p>11 those text messages.</p> <p>12 <b>A. I just searched back in my history to</b></p> <p>13 <b>find them.</b></p> <p>14 Q. Okay. When you found out that there</p> <p>15 was a lawsuit about the Noah Leopold case, did</p> <p>16 you remember that case?</p> <p>17 <b>A. I did remember the case, yes.</b></p> <p>18 Q. Okay. And so when somebody came and</p> <p>19 asked you to figure out if you had any text</p> <p>20 messages, you knew what to look for.</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. All right. Okay.</p> <p>23 Anything else that you looked at to</p> <p>24 prepare for your deposition?</p> <p>25 <b>A. No.</b></p>
<p style="text-align: right;">Page 11</p> <p>1 Q. We got some emails just today that had</p> <p>2 some data from lactates and also flow</p> <p>3 information that I think you were involved in</p> <p>4 maybe emailing with Alex Reynolds. Is that</p> <p>5 right?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. Did you look at that to prepare for</p> <p>8 your deposition?</p> <p>9 <b>A. That is the data that comes from the</b></p> <p>10 <b>OCS machine that he, in turn, puts into a form</b></p> <p>11 <b>that is easier to look at.</b></p> <p>12 Q. Yeah. Fair.</p> <p>13 So the -- the dat -- the raw data</p> <p>14 that's in these emails is the same as it was on</p> <p>15 that Excel spreadsheet, it's just a different</p> <p>16 format?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. Yep. Understood.</p> <p>19 What else did you look at to prepare</p> <p>20 for your deposition?</p> <p>21 <b>A. That's all.</b></p> <p>22 Q. Text messages?</p> <p>23 <b>A. I've seen them previously.</b></p> <p>24 Q. One of the things that happens in these</p> <p>25 cases is I get to ask Mayo to provide me with a</p>	<p style="text-align: right;">Page 13</p> <p>1 Q. Okay. Let's talk a little bit then</p> <p>2 about your background. You're a nurse by</p> <p>3 training?</p> <p>4 <b>A. I'm a respiratory therapist.</b></p> <p>5 Q. Where did you go to school?</p> <p>6 <b>A. I have a bachelor's degree from the U</b></p> <p>7 <b>of M, and I did my respiratory portion of that</b></p> <p>8 <b>bachelor's degree here at Mayo School of Health</b></p> <p>9 <b>Sciences.</b></p> <p>10 Q. Did you go to the U of M Rochester?</p> <p>11 <b>A. Rochester, yes.</b></p> <p>12 Q. What is your undergraduate degree in?</p> <p>13 <b>A. Bachelor of Health Science.</b></p> <p>14 Q. And then there's some component of</p> <p>15 training with that to become a respiratory</p> <p>16 therapist?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. So is that included in the four years,</p> <p>19 or was that additional to the four years?</p> <p>20 <b>A. It's included in the four years.</b></p> <p>21 Q. How much of that, your four years at UM</p> <p>22 Rochester, was in the respiratory therapist</p> <p>23 program?</p> <p>24 <b>A. Two.</b></p> <p>25 Q. What year did you graduate from the</p>

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<p>1 program?</p> <p>2 <b>A. I graduated in 2014.</b></p> <p>3 Q. And then what did you do?</p> <p>4 <b>A. I was already an intern for Mayo for</b></p> <p>5 <b>respiratory therapy and I became a full-time</b></p> <p>6 <b>respiratory therapist.</b></p> <p>7 Q. In 2014.</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. In your professional life -- I'm not</p> <p>10 talking about like Starbucks or something like</p> <p>11 that -- but in your professional life, have you</p> <p>12 ever worked anywhere other than Mayo?</p> <p>13 <b>A. No.</b></p> <p>14 Q. Always adults or do you do peds as</p> <p>15 well?</p> <p>16 <b>A. Both.</b></p> <p>17 Q. Okay. In what --</p> <p>18 In which units have you worked?</p> <p>19 <b>A. In car -- the cardiac ICU.</b></p> <p>20 Q. Always in the cardiac ICU?</p> <p>21 <b>A. We float to other places periodically,</b></p> <p>22 <b>or I did at the beginning, but ever -- for many,</b></p> <p>23 <b>many years only in the cardiac ICU.</b></p> <p>24 Q. Okay. Adults and peds?</p> <p>25 <b>A. Adults and peds.</b></p>	<p>1 part of the ECMO team. Is that my</p> <p>2 understanding?</p> <p>3 <b>A. There are four of us that are ECMO</b></p> <p>4 <b>specialists that became part of the OCS team.</b></p> <p>5 Q. You.</p> <p>6 <b>A. Uh-huh.</b></p> <p>7 Q. Megan Osterhaus?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. Adam Skow?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. And Alex Reynolds?</p> <p>12 <b>A. Alex is a perfusionist.</b></p> <p>13 Q. Okay.</p> <p>14 <b>A. So there's four ECMO specialists and</b></p> <p>15 <b>four perfusionists.</b></p> <p>16 Q. Who is the other ECMO specialist that I</p> <p>17 missed?</p> <p>18 <b>A. Greg Anderson.</b></p> <p>19 Q. I missed him because he's not anywhere</p> <p>20 on any of these text messages.</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. Okay. So there's four ECMO specialists</p> <p>23 that are also OCS specialists, and then four</p> <p>24 perfusionists who are also OCS specialists.</p> <p>25 <b>A. Yes.</b></p>
Page 15	Page 17
<p>1 Q. What would you say would be the</p> <p>2 percentage breakdown currently between adults</p> <p>3 and peds?</p> <p>4 <b>A. Currently it's about 50/50. It</b></p> <p>5 <b>fluctuates greatly though.</b></p> <p>6 Q. Sure. Okay. That's fair.</p> <p>7 So you've got your respiratory</p> <p>8 therapist work in the cardiac ICU, and then a</p> <p>9 part of that is OCS specialist.</p> <p>10 <b>A. So I became an ECMO specialist in 2015.</b></p> <p>11 Q. Perfect.</p> <p>12 <b>A. And in 2019 I became dedicated to ECMO,</b></p> <p>13 <b>and I don't work as a respiratory therapist</b></p> <p>14 <b>anymore. And part of the ECMO program, --</b></p> <p>15 Q. Got it.</p> <p>16 <b>A. -- we started doing OCS.</b></p> <p>17 Q. Gotcha.</p> <p>18 Okay. So 2019 is when you stopped</p> <p>19 doing respiratory therapy.</p> <p>20 <b>A. In 2019 we became a dedicated team</b></p> <p>21 <b>where we did mostly ECMO, a little bit of</b></p> <p>22 <b>respiratory. About two or three years ago I</b></p> <p>23 <b>stopped doing respiratory therapy and focused</b></p> <p>24 <b>solely on ECMO.</b></p> <p>25 Q. And then the OCS runs are kind of a</p>	<p>1 Q. Did all of you go out to Boston to get</p> <p>2 your training at the same time?</p> <p>3 <b>A. We were split between two -- three</b></p> <p>4 <b>different times out there.</b></p> <p>5 Q. And you told me, but I probably forgot</p> <p>6 it, when did you do your training?</p> <p>7 <b>A. A little over two years ago.</b></p> <p>8 Q. So spring or summer of 2022.</p> <p>9 <b>A. Uh-huh.</b></p> <p>10 Q. Yes?</p> <p>11 <b>A. Yes. Sorry.</b></p> <p>12 Q. That's okay.</p> <p>13 What percentage of your professional</p> <p>14 time now is spent doing OCS runs as opposed to</p> <p>15 being an ECMO specialist in the hospital?</p> <p>16 <b>A. The vast majority of my time is ECMO.</b></p> <p>17 <b>We're only on call for OCS every six to eight</b></p> <p>18 <b>weeks on average.</b></p> <p>19 Q. ECMO is one of those things that it's</p> <p>20 hard to predict when somebody is going to have</p> <p>21 to go on ECMO; right?</p> <p>22 <b>A. Correct.</b></p> <p>23 Q. So if your job is as an ECMO</p> <p>24 specialist, and you're on duty but there's</p> <p>25 nobody who's on ECMO, what do you do?</p>

5 (Pages 14 to 17)

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<p style="text-align: right;">Page 18</p> <p>1       <b>A. There's a lot of projects that go along</b>  2       <b>with ECMO, and so if I don't have a patient to</b>  3       <b>care for, then I'm working on those.</b>  4       Q. Like maintenance on the machines and  5       things like that type of projects?  6       <b>A. No. More like education, collecting</b>  7       <b>data, things like that.</b>  8       Q. All right. Okay.  9       Was becoming an OCS specialist kind of  10      a required part of being an ECMO specialist, or  11      was that something you chose to do?  12      <b>A. I chose to do it.</b>  13      Q. Got it.  14      Why?  15      <b>A. A lot patients we see on ECMO are</b>  16      <b>waiting for transplants, and this gives us an</b>  17      <b>opportunity to go further to get hearts for</b>  18      <b>patients --</b>  19      Q. Uh-huh.  20      <b>A. -- and I wanted to be part of that.</b>  21      Q. It's really cool technology.  22      <b>A. It is.</b>  23      Q. So is ECMO; right?  24      <b>A. It is.</b>  25      Q. It's amazing.</p>	<p style="text-align: right;">Page 20</p> <p>1       machine. Is that right?  2       <b>A. We run the machine. If we have any</b>  3       <b>issues that we cannot deal with, we have the</b>  4       <b>surgeons right there.</b>  5       Q. Gotcha.  6       Have there been times when the surgeons  7       needed to step in to deal with something on the  8       machine?  9       <b>A. In runs that I've been on, yes.</b>  10      Q. Give me an example.  11      <b>A. An example would be where the heart</b>  12      <b>isn't capturing on the pacer box.</b>  13      Q. So what do they do about that?  14      <b>A. There are pads underneath the heart</b>  15      <b>that they manipulate.</b>  16      Q. While the heart is inside the box.  17      <b>A. Yes.</b>  18      Q. So they don't break the sterility of  19      the box, they're able to do it kind of through  20      the machine?  21      <b>A. There is a --</b>  22      <b>There are two lids to the box, one is</b>  23      <b>a --</b>  24      Q. Like a hard lid?  25      <b>A. One's a hard lid and then one is more</b></p>
<p style="text-align: right;">Page 19</p> <p>1       Okay. As part of your OCS training,  2       did you learn about some of the risks associated  3       with transporting a heart on the OCS machine?  4       <b>A. They did say that there was some, yes.</b>  5       Q. Such as?  6       <b>A. I can't recall any off the top of my</b>  7       <b>head.</b>  8       Q. Okay. Did you learn about the fact  9       that there, at least in the one study that  10      studied cold cardioplegia versus OCS, there were  11      worse survival statistics with the OCS patients?  12      <b>A. They mentioned those studies, but I</b>  13      <b>don't know much about them.</b>  14      Q. Sure.  15      I assume that you're never a part of  16      informed-consent discussions with patients.  17      <b>A. I am not.</b>  18      Q. Your job is to manage that complicated  19      machine with the organ on it when you're going  20      on one of these OCS runs.  21      <b>A. Yes.</b>  22      Q. We deposed Michael Pick yesterday, and  23      from talking with him, my understanding is that  24      if you're on an OCS run as the OCS specialist,  25      you are the one who's responsible for that</p>	<p style="text-align: right;">Page 21</p> <p>1       <b>of a plastic lid that they are able to, while</b>  2       <b>keeping sterility, manipulate it.</b>  3       Q. Gotcha.  4       Okay. Is there Wi-Fi on the planes  5       during these OCS runs?  6       <b>A. Most of them, no.</b>  7       Q. So I found an article that was  8       published by some cardiothoracic surgeons at  9       Mayo Clinic Jacksonville. Have you ever worked  10      with any of the people at Mayo Jacksonville?  11      <b>A. No.</b>  12      Q. One of the things that they write is  13      that a "limiting factor in using OCS is the  14      transportation of the heart from facilities.  15      OCS transportation is more complicated than SCS  16      because there is a need for upgraded cars and  17      airplanes as the OCS machine must be plugged  18      into an outlet and connected to Wi-Fi." But in  19      your experience, the machine usually isn't  20      connected to Wi-Fi.  21      <b>A. Correct.</b>  22      Q. Is it usually connect -- plugged into  23      an outlet on the airplane?  24      <b>A. Not on the airplane.</b>  25      Q. Okay. In the car?</p>

6 (Pages 18 to 21)



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<p style="text-align: right;">Page 22</p> <p>1       <b>A. No.</b></p> <p>2       Q. Just when it's either at the donor</p> <p>3       hospital or once you get back to Mayo.</p> <p>4       <b>A. Correct.</b></p> <p>5       Q. Other than that, you're relying on the</p> <p>6       battery, --</p> <p>7       <b>A. Yes.</b></p> <p>8       Q. -- the internal battery. How --</p> <p>9       What's the battery life on that thing?</p> <p>10       <b>A. I don't recall right off. There are</b></p> <p>11       <b>three batteries in it though.</b></p> <p>12       Q. Presumably there's a lot of cushion on</p> <p>13       the battery life; right?</p> <p>14       <b>A. Yes.</b></p> <p>15       Q. My daughter has a Trilogy vent and that</p> <p>16       thing's got internal batteries that I think last</p> <p>17       forever.</p> <p>18       All right. One of the other things</p> <p>19       that the folks at Mayo Jacksonville write is</p> <p>20       that "more resources and personnel must be</p> <p>21       allocated to the application of OCS as it needs</p> <p>22       at least five staff members to work on the</p> <p>23       device each time." Do you have any idea what</p> <p>24       they're talking about when they say there must</p> <p>25       be at least five staff members?</p>	<p style="text-align: right;">Page 24</p> <p>1       you remember.</p> <p>2       <b>A. I don't remember anything specifically</b></p> <p>3       <b>about the run itself. What I remember is</b></p> <p>4       <b>getting messages asking for the data after being</b></p> <p>5       <b>in my bed --</b></p> <p>6       Q. Yeah.</p> <p>7       <b>A. -- at home.</b></p> <p>8       Q. Yep. And some of that -- some of that</p> <p>9       communication and some of the aftermath of that</p> <p>10       communication was captured in some of these text</p> <p>11       messages that you pulled off your phone; right?</p> <p>12       <b>A. Yes.</b></p> <p>13       Q. My sense from reading those texts --</p> <p>14       and you correct me if -- if my sense on this is</p> <p>15       wrong -- my sense in reading some of the texts</p> <p>16       you were say -- sending is that you felt like</p> <p>17       those surgeons were kind of throwing you under</p> <p>18       the bus. Would that be an accurate way of</p> <p>19       describing it?</p> <p>20       <b>A. I felt that they --</b></p> <p>21       <b>Yeah. I felt that they -- that they</b></p> <p>22       <b>spoke to something that they weren't a</b></p> <p>23       <b>hundred percent in the know about.</b></p> <p>24       Q. Yeah. We'll talk about some of the</p> <p>25       detail of that. I think there was some stuff in</p>
<p style="text-align: right;">Page 23</p> <p>1       <b>A. No.</b></p> <p>2       Q. You certainly don't have five staff</p> <p>3       members working on an OCS run.</p> <p>4       <b>A. Not five, no.</b></p> <p>5       Q. Three at least?</p> <p>6       <b>A. At least three.</b></p> <p>7       Q. Sometimes four.</p> <p>8       <b>A. Correct.</b></p> <p>9       Q. Do you have any sense of how it would</p> <p>10       be decided that you'd have one surgeon versus</p> <p>11       two on an OCS run?</p> <p>12       <b>A. I don't --</b></p> <p>13       <b>I've only ever gone with two surgeons.</b></p> <p>14       Q. Oh, okay.</p> <p>15       Are you ever the person who is</p> <p>16       communicating back to either the room nurse or</p> <p>17       the transplanting surgeon at Mayo about things</p> <p>18       that are happening on the OCS run?</p> <p>19       <b>A. No.</b></p> <p>20       Q. All right. Okay. You told me that you</p> <p>21       remember this case.</p> <p>22       <b>A. Yes.</b></p> <p>23       Q. We're going to get into lots of</p> <p>24       details, but right now I just want you to give</p> <p>25       me like the 30,000-foot view of what it is that</p>	<p style="text-align: right;">Page 25</p> <p>1       the text messages about that.</p> <p>2       You found out that something had gone</p> <p>3       wrong with that donor heart, that you had been</p> <p>4       involved on the run to Idaho to go and get, when</p> <p>5       you got messages that morning when you were in</p> <p>6       your bed; is that fair?</p> <p>7       <b>A. Yes.</b></p> <p>8       Q. Up until that point, the only thing</p> <p>9       that -- the only thing that would even be of</p> <p>10       marginal concern about that heart was that I</p> <p>11       think you described it as it wasn't the most</p> <p>12       robust heart or the happiest heart; is that</p> <p>13       right?</p> <p>14       MR. BRANTINGHAM: Object to the form of</p> <p>15       the question.</p> <p>16       <b>A. The --</b></p> <p>17       MR. BRANTINGHAM: You can answer.</p> <p>18       <b>A. There is nothing about the run prior</b></p> <p>19       <b>that stands out to me as something being wrong.</b></p> <p>20       Q. What would you have had to have seen --</p> <p>21       Well first of all, I assume that</p> <p>22       you're -- it's got a clear lid on it. You're</p> <p>23       looking at that heart --</p> <p>24       <b>A. Yes.</b></p> <p>25       Q. -- periodically while the run is going</p>

7 (Pages 22 to 25)



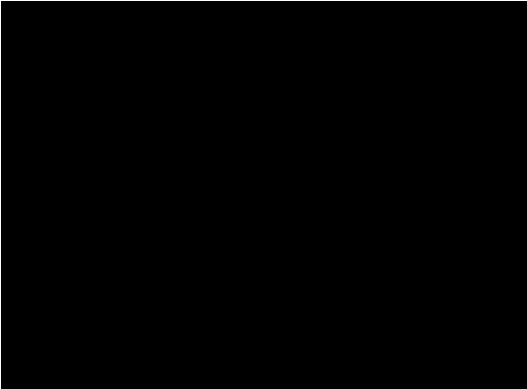
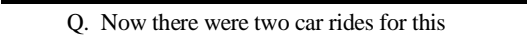

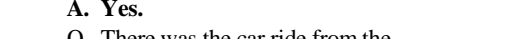
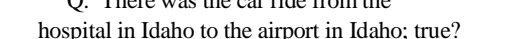

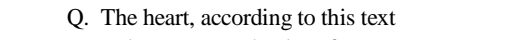
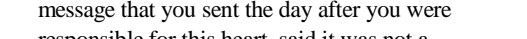
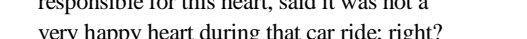
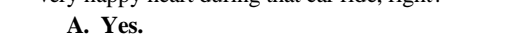





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<p style="text-align: right;">Page 26</p> <p>1 on; right?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. In the vehicle on the way to the</p> <p>4 airplane, on the airplane, and in the vehicle on</p> <p>5 the way from Rochester airport to Mayo, you're</p> <p>6 watching that heart; right?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. Are you watching it like the whole</p> <p>9 time, like watching it like a hawk, or is it</p> <p>10 you're looking at it every five or ten minutes?</p> <p>11 <b>A. The console with all of the -- or the</b></p> <p>12 <b>screen with all of the data on it is with me at</b></p> <p>13 <b>all times.</b></p> <p>14 Q. Yep.</p> <p>15 <b>A. For transport purposes through the</b></p> <p>16 <b>hospitals and for protection in the vehicle, we</b></p> <p>17 <b>don't always have the lid on -- or we don't</b></p> <p>18 <b>always have the lid off, I should say. But if,</b></p> <p>19 <b>in the plane, in -- when it's just us and when</b></p> <p>20 <b>we don't have to protect it from getting bumped,</b></p> <p>21 <b>the lid is off, and yes, we are watching it.</b></p> <p>22 Q. More closely than just glancing at it</p> <p>23 every five minutes.</p> <p>24 <b>A. Correct.</b></p> <p>25 Q. Yeah.</p>	<p style="text-align: right;">Page 28</p> <p>1 Q. You wouldn't be saying the heart was</p> <p>2 not the most robust if the heart looked perfect;</p> <p>3 right?</p> <p>4 MR. BRANTINGHAM: Object to form and</p> <p>5 foundation.</p> <p>6 <b>A. There is a wide range of what is normal</b></p> <p>7 <b>on the machine. Some are very robust, some are</b></p> <p>8 <b>not, and it doesn't indicate how the heart's</b></p> <p>9 <b>going to do off the machine.</b></p> <p>10 Q. It doesn't necessarily, but it might.</p> <p>11 Can't we agree on that?</p> <p>12 MR. BRANTINGHAM: Foundation.</p> <p>13 <b>A. Once it's off the machine, I don't know</b></p> <p>14 <b>what happens to the hearts.</b></p> <p>15 Q. Fair enough.</p> <p>16 You are trained to tell somebody if</p> <p>17 there's anything that looks in any way</p> <p>18 concerning about that heart; right?</p> <p>19 <b>A. The surgeons that are with me.</b></p> <p>20 Q. Yeah.</p> <p>21 And so if you noticed that the heart</p> <p>22 wasn't the most robust or didn't look like a</p> <p>23 happy heart --</p> <p>24 Let's stick with happy. What do you</p> <p>25 think you meant when you said it wasn't a happy</p>
<p style="text-align: right;">Page 27</p> <p>1 So what would you have to see, in terms</p> <p>2 of the actual function of the heart, in order to</p> <p>3 describe it as you did in these text messages as</p> <p>4 "not the most robust?"</p> <p>5 MR. BRANTINGHAM: Object to the form of</p> <p>6 the question.</p> <p>7 <b>A. There is a wide range of how robust</b></p> <p>8 <b>hearts are when they're on the machine. As to</b></p> <p>9 <b>if there is anything specific about the heart</b></p> <p>10 <b>that stands out to me, no.</b></p> <p>11 Q. As you sit here today, there's nothing</p> <p>12 that stands out to you in particular; right?</p> <p>13 <b>A. Correct.</b></p> <p>14 Q. But back last August, when you -- that</p> <p>15 heart was fresh in your mind --</p> <p>16 Because you're sending these messages</p> <p>17 just a few hours after you had last seen it;</p> <p>18 right?</p> <p>19 <b>A. Uh-huh.</b></p> <p>20 Q. Yes?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. Back when things were much fresher in</p> <p>23 your mind you were describing the heart as not</p> <p>24 the most robust; right?</p> <p>25 <b>A. I did.</b></p>	<p style="text-align: right;">Page 29</p> <p>1 heart?</p> <p>2 MR. BRANTINGHAM: Foundation.</p> <p>3 <b>A. I don't know what I would have meant by</b></p> <p>4 <b>that.</b></p> <p>5 Q. Sure. The --</p> <p>6 What you want to see, if we're using</p> <p>7 that adjective, what you want to see is a happy</p> <p>8 heart; right?</p> <p>9 <b>A. What we're looking at is more of what</b></p> <p>10 <b>the pressures, flows, and lactates are doing.</b></p> <p>11 Q. Yeah. You know that the pressures, the</p> <p>12 flows, and the lactates only tell part of the</p> <p>13 story though; right?</p> <p>14 <b>A. What the heart looks like is up to the</b></p> <p>15 <b>surgeons and if they are happy with it.</b></p> <p>16 Q. I understand that. You got to stick</p> <p>17 with my questions though.</p> <p>18 You understand, as an OCS specialist,</p> <p>19 that the objective data of the flows and the</p> <p>20 lactates only tell part of the story; right?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. The way the heart looks is also</p> <p>23 important; isn't it?</p> <p>24 <b>A. It can be.</b></p> <p>25 Q. I mean that's why it's in a clear box.</p>

8 (Pages 26 to 29)

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<p style="text-align: right;">Page 30</p> <p>1 It's one of the advantages of the OCS is you can 2 see it beating; right?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. So let's go back to our use of the 5 adjective "happy." When you're watching that 6 heart like a hawk, what you want to see is a 7 happy heart; right?</p> <p>8 MR. BRANTINGHAM: Form of the question.</p> <p>9 <b>A. The heart, how it looks, the surgeons</b> 10 <b>are the ones that are the -- saying if they're</b> 11 <b>happy with it or not.</b></p> <p>12 Q. Right. We'll talk about that in a 13 minute, but I'm going to stick with you because 14 you were the one who described it as not happy, 15 so we're going to use your adjective and I'm 16 going to ask you.</p> <p>17 Can't you agree with me that what you 18 would like to see, when you're watching that 19 heart like a hawk, is that the heart looks 20 happy?</p> <p>21 <b>A. Yes, you would like to see that.</b></p> <p>22 Q. Now you've said a couple of times now 23 that ultimately it's up to the surgeons to make 24 sure that they feel comfortable with the way the 25 heart looks; true?</p>	<p style="text-align: right;">Page 32</p> <p>1 Q. They don't --</p> <p>2 <b>A. They can see.</b></p> <p>3 Q. That was going to be my next question.</p> <p>4 It's not that they don't care about how 5 it looks, it's that there's no substitute for 6 their own eyes, so your opinion of how it looks 7 maybe doesn't matter to them as much. Fair?</p> <p>8 <b>A. They can see how the heart is, yes.</b></p> <p>9 Q. If they're awake.</p> <p>10 <b>A. If they're looking at it, yes.</b></p> <p>11 Q. Yeah. You and I can agree that if the 12 surgeons aren't in the car on the way from the 13 hospital in Idaho to the airport in Idaho, they 14 can't be looking to see if the heart's happy; 15 right?</p> <p>16 <b>A. During the transports, no.</b></p> <p>17 Q. And this heart wasn't happy on both car 18 rides according to your text messages; right?</p> <p>19 MR. BRANTINGHAM: Foundation. And 20 again, if you need to look at a document, you 21 can say so. If you want to see the text 22 messages, you can say so. I just note for the 23 record counsel is not showing the witness the 24 documents he's asking about. 25 </p>
<p style="text-align: right;">Page 31</p> <p>1 <b>A. Yes.</b></p> <p>2 Q. Your job is to be watching it like a 3 hawk, monitoring the objective data that's 4 coming out of that machine, but it's ultimately 5 the surgeon's decision about what to do with the 6 data. Fair?</p> <p>7 <b>A. Say that again.</b></p> <p>8 Q. Yeah. Your job is to gather data about 9 the heart while it's in transit; right?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. And then that data is communicated to 12 the surgeons, and then the surgeons decide is 13 this data concerning or are we okay with it?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. That includes not just the objective 16 stuff like the flows and the lactate, but also 17 the subjective stuff like does this heart look 18 happy.</p> <p>19 <b>A. We --</b></p> <p>20 MR. BRANTINGHAM: Object to the form of 21 the question. Go ahead.</p> <p>22 <b>A. We --</b></p> <p>23 <b>They ask us about the objective part,</b> 24 <b>the flows, the pressures, the lactates. They</b> 25 <b>don't ask us about how it looks.</b></p>	<p style="text-align: right;">Page 33</p> <p>1  2  3  4  5  6  7  8  9  10  11  12  13  14  15 Q. Now there were two car rides for this 16 heart; right?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. There was the car ride from the 19 hospital in Idaho to the airport in Idaho; true?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. The heart, according to this text 22 message that you sent the day after you were 23 responsible for this heart, said it was not a 24 very happy heart during that car ride; right?</p> <p>25 <b>A. Yes.</b></p>

9 (Pages 30 to 33)

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Page 34

1 Q. Now the surgeons weren't in the car  
2 with you and the heart for that car ride; right?

3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]

15 Q. So what you told Adam Skow, again the  
16 day after this all happened, was that those  
17 surgeons weren't in the car on the way from the  
18 airport in Idaho -- or on the way from the  
19 hospital in Idaho to the airport, and they  
20 weren't in the car on the way from the Rochester  
21 airport to the hospital in Rochester; right?

22 A. According to the text, yes.

23 Q. And certainly, even though you don't  
24 remember it now, you and I can agree that you  
25 would have remembered it just a couple hours

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1 Q. There wasn't another OCS specialist on  
2 this flight though; right?

3 A. There was.

4 Q. Michael Pick?

5 A. Megan.

6 Q. Megan was on this flight as well.

7 A. Yes.

8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]

15 I'll ask it a different way. I didn't  
16 see anything in any of these text messages that  
17 suggested that Megan was disagreeing with  
18 anything that you were saying. Did you see  
19 something in reviewing these text messages that  
20 I missed?

21 A. No.

22 Q. Do you remember having conversations  
23 with Megan about this OCS run that aren't  
24 captured in these text messages?

25 A. She was with me on the run, and so we

Page 35

1 after it happened.

2 A. Yes.

3 Q. All right. So based on this, you can  
4 agree with me that the surgeons were not in the  
5 car with you and the heart on the way from the  
6 hospital in Idaho to the airport in Idaho;  
7 right?

8 A. Yes.

9 Q. When the heart was not very happy;  
10 right?

11 A. Yes.

12 Q. And they couldn't have seen it then;  
13 true?

14 A. True.

15 Q. Then you get to the airport, and then  
16 you get on the plane, and you -- are you --

17 You and probably somebody else is  
18 lugging that machine onto the plane?

19 A. Yes.

20 Q. Who else --

21 Who's helping you put the machine on  
22 the plane?

23 A. I don't recall who that particular trip  
24 helped. It's usually me and the other OCS  
25 specialist that are doing it.

Page 37

1 were having conversations during the run, but  
2 otherwise, no.

3 Q. We'll talk about that in a minute. I'm  
4 talking right now about after the fact. Once  
5 Dr. V was asking questions and somebody woke you  
6 up from your bed in the morning texting you with  
7 questions, once you knew that something bad had  
8 happened to that heart, do you remember you and  
9 Megan having any conversations that aren't  
10 captured in these texts?

11 A. No.

12 Q. Okay. So back now to our discussion  
13 about the heart.

14 Once the heart gets on the airplane, if  
15 it's not robust and it's not very happy, the  
16 surgeons should be noticing that; right?

17 A. They see the heart, yes.

18 Q. But they got to be awake in order to  
19 see the heart; right?

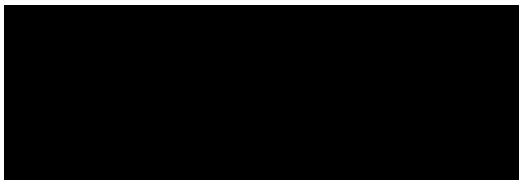
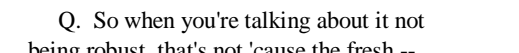
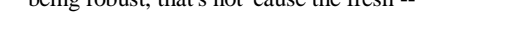


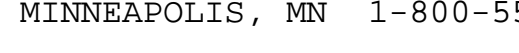
20 A. They --

21 It's normal for them to sleep as long  
22 as we don't have any issues.

23 Q. That's fair. My question to you,  
24 though, is: If the heart's not robust and the  
25 heart's not happy, the surgeons aren't going to

10 (Pages 34 to 37)

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<p style="text-align: right;">Page 38</p> <p>1 be able to notice that if they're sleeping; 2 right? 3 <b>A. Yes.</b> 4 Q. It would be really strange for the 5 heart to not be very happy in the car in Idaho 6 and in the car in Minnesota, but it was 7 perfectly happy when it was up in the air; 8 right? 9 <b>A. No. That's normal.</b> 10 Q. That's normal? 11 <b>A. Yes.</b> 12 Q. How does that work? 13 <b>A. The bumps of the vehicle the hearts do</b> 14 <b>not always like, and that's normal.</b> 15 Q. So is it your testimony that what you 16 meant when you said "It wasn't a very happy 17 heart," what you meant was, "Oh, that was just 18 the regular bouncing around in the car?" 19 <b>A. Yes.</b> 20 Q. Got it. 21 But the turbulence on an airplane when 22 you're flying over the Rocky Mountains doesn't 23 affect that? 24 MR. BRANTINGHAM: Form and foundation. 25 <b>A. Sometimes the turbulence on the plane</b></p>	<p style="text-align: right;">Page 40</p> <p>1 pressures and flows don't look good, you're 2 actually saying the heart wasn't the most robust 3 despite the fact that the pressures and flows 4 looked good; right? 5 MR. BRANTINGHAM: Object to the form of 6 the question. You can answer. 7 <b>A. Can you ask that again?</b> 8 Q. Yeah. A minute ago I think you tried 9 to give the impression that what you meant when 10 you said that this wasn't a very robust heart, 11 wasn't a very happy heart, is you were saying, 12 oh, what I meant by that was the pressure and 13 the flows temporarily didn't look good. Is that 14 what you intended to say? 15 <b>A. I'm talking about --</b> 16 Q. No. Just stick with my question. 17 Is that what you intended to say a 18 couple minutes ago? 19 MR. BRANTINGHAM: I'll just object to 20 interrupting the witness and preventing her from 21 answering the question. If you can answer the 22 question you're now being asked, go ahead. 23 MR. THOMPSON: You're now coaching. 24 Don't do that. 25 Q. Go ahead and answer my question.</p>
<p style="text-align: right;">Page 39</p> <p>1 <b>will make the flows and pressures out of normal</b> 2 <b>range, but they correct themselves.</b> 3 Q. I'm not talking about the flows and 4 pressures. I'm talking about the way the heart 5 looks. 6 Is it your testimony that it's 7 perfectly normal for one of these hearts on this 8 machine to not be very happy and not look robust 9 when you're driving in the car? 10 <b>A. By not --</b> 11 <b>By saying it's not very happy, I'm</b> 12 <b>talking about the flows and pressures.</b> 13 Q. So your testimony now is that the flows 14 and pressures didn't look good. 15 <b>A. No, they were fine. The -- they</b> 16 <b>momentarily will go out of range during bumps,</b> 17 <b>but they correct themselves.</b> 18  19  20  21  22  23  24 Q. So when you're talking about it not 25 being robust, that's not 'cause the fresh --</p>	<p style="text-align: right;">Page 41</p> <p>1 MR. BRANTINGHAM: Object to the form of 2 the question. 3 Q. There was something other than the 4 pressures and flows that weren't normal with 5 this heart; right? 6 <b>A. The heart didn't overall look abnormal</b> 7 <b>to me.</b> 8 Q. Okay. That wasn't my question. So now 9 I'm going to ask a different question. 10 First of all, you don't remember what 11 this heart looked like now a year later; do you? 12 <b>A. There was nothing abnormal about the</b> 13 <b>heart that makes me remember it this --</b> 14 Q. My question -- 15 <b>A. -- long after.</b> 16 Q. My question to you is: You do not 17 remember what that heart looked like a year ago; 18 do you? 19 <b>A. Currently, today, I do not remember how</b> 20 <b>the heart looked a year ago.</b> 21 Q. What we do know is that the day after 22 you saw this heart there was something about it 23 that made you say "It wasn't the most robust 24 heart;" right? 25 <b>A. There must have been.</b></p>

11 (Pages 38 to 41)

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<p style="text-align: right;">Page 42</p> <p>1 Q. [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 Q. Right. You -- you don't have any</p> <p>9 reason now, a year later, to think that what you</p> <p>10 said in the message the day after is wrong; do</p> <p>11 you?</p> <p>12 A. I don't know what I would have meant --</p> <p>13 a year from when this happened what I meant.</p> <p>14 Q. So let's talk about what you didn't</p> <p>15 mean. You didn't mean that there was something</p> <p>16 wrong with the pressures and flows; right?</p> <p>17 A. Yes.</p> <p>18 Q. And when you said "It wasn't the most</p> <p>19 robust heart," you didn't mean there was</p> <p>20 something wrong with the lactate; right?</p> <p>21 A. Correct.</p> <p>22 Q. Are there any other objective</p> <p>23 measurements that you are tracking?</p> <p>24 A. No.</p> <p>25 Q. So when you said "It wasn't the most</p>	<p style="text-align: right;">Page 44</p> <p>1 Q. The flows and the pressures looked</p> <p>2 good; right? What you said in the message is</p> <p>3 the flows and the pressures looked good; right?</p> <p>4 MR. BRANTINGHAM: I'm going to object</p> <p>5 as argumentative.</p> <p>6 MR. THOMPSON: What's your objection?</p> <p>7 MR. BRANTINGHAM: My objection is</p> <p>8 you're -- you're arguing with her. The document</p> <p>9 says what it says. That's clear. You've asked</p> <p>10 her what the document says, and that -- there's</p> <p>11 no question about what it says. Now you're just</p> <p>12 arguing with her about her interpretation of her</p> <p>13 text because you don't like the interpretation.</p> <p>14 MR. THOMPSON: Okay. It's not your --</p> <p>15 MR. BRANTINGHAM: It's not okay.</p> <p>16 MR. THOMPSON: Are you done with your</p> <p>17 objection?</p> <p>18 MR. BRANTINGHAM: Yeah. I'm done.</p> <p>19 MR. THOMPSON: Great.</p> <p>20 Q. You said the pressures and the flows</p> <p>21 looked good.</p> <p>22 A. Yes.</p> <p>23 Q. So now you're saying that what you</p> <p>24 meant when you said the heart wasn't very happy</p> <p>25 is that the pressures and the flows didn't look</p>
<p style="text-align: right;">Page 43</p> <p>1 robust heart," you weren't talking about any of</p> <p>2 the objective measurements; true?</p> <p>3 A. True.</p> <p>4 Q. Because the objective measurements</p> <p>5 looked good, and yet it wasn't the most robust</p> <p>6 heart; right?</p> <p>7 A. According to my text message.</p> <p>8 Q. And if the objective measurements look</p> <p>9 good, the other thing that we're looking at,</p> <p>10 when we're monitoring a heart on the OCS, is</p> <p>11 subjectively how it looks through that clear</p> <p>12 box; right?</p> <p>13 A. Correct.</p> <p>14 Q. So there was something about the way it</p> <p>15 subjectively looked that made you say "It wasn't</p> <p>16 the most robust heart;" right?</p> <p>17 A. Yes.</p> <p>18 Q. And there was something subjectively</p> <p>19 about the way it looked that made you say "It</p> <p>20 was not a very happy heart during the car</p> <p>21 rides."</p> <p>22 MR. BRANTINGHAM: Object as asked and</p> <p>23 answered. Object to the form.</p> <p>24 A. What I meant by "not very happy" was</p> <p>25 based off of the flows and pressures.</p>	<p style="text-align: right;">Page 45</p> <p>1 good?</p> <p>2 A. During the car rides they can go out of</p> <p>3 range during turbulence -- or during bumps.</p> <p>4 Q. I've just handed you the Excel</p> <p>5 spreadsheet that Mayo provided us that's got the</p> <p>6 flow data in it.</p> <p>7 Okay. Go ahead and pick that up. You</p> <p>8 only need one copy.</p> <p>9 MR. BRANTINGHAM: Can I have a copy?</p> <p>10 MR. THOMPSON: Uh-huh.</p> <p>11 Q. All right. The OCS start is at 23:06</p> <p>12 according to the records that we've got. So go</p> <p>13 ahead and go to 23:06 on the time there.</p> <p>14 A. Uh-huh.</p> <p>15 Q. Okay. Now when you say that the flows</p> <p>16 can get out of whack, which column would we be</p> <p>17 looking at?</p> <p>18 A. PF.</p> <p>19 Q. PF. Okay.</p> <p>20 Let's go ahead and look down as far as</p> <p>21 you need to go and tell me when that PF column</p> <p>22 looks out of whack such that you -- would lead</p> <p>23 you to say that heart doesn't look happy because</p> <p>24 something's happening with the flows because the</p> <p>25 car is bouncing around.</p>

12 (Pages 42 to 45)



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<p>1       <b>A. (Witness reviewing.)</b>  2       <b>The flows all look fine.</b>  3       Q. So when you said the heart wasn't a  4       very happy heart during the car rides, that  5       didn't have anything to do with the flows being  6       out of whack; did it?  7       MR. BRANTINGHAM: Foundation.  8       <b>A. (Witness reviewing.)</b>  9       <b>All the flows look fine.</b>  10       Q. Right. So my question to you is: When  11       you said that the heart wasn't very happy, it  12       didn't have anything to do with the flows; did  13       it?  14       <b>A. Not that's captured on here.</b>  15       Q. Well and that would be the only place  16       it would be captured; right?  17       <b>A. They can periodically -- or they can</b>  18       <b>very quickly go out of range and not be captured</b>  19       <b>in these two-minute increments.</b>  20       Q. Is it your testimony that you think  21       that's what happened, that there was a -- some  22       very, very transient change in the flow that  23       happened to not get captured on this data, and  24       even though it was transient enough to not get  25       captured on the data, it was a big enough deal</p>	<p>1       Q. Is that the first time that you see  2       anything out of whack with the pressures?  3       MR. BRANTINGHAM: Just object to the  4       form of the question.  5       Can you point to where you're looking  6       at for me to make sure I have the same sheet  7       here?  8       (Witness indicating.)  9       Okay. What's the pending question?  10       MR. THOMPSON: The question is is that  11       90 that she referred to at 2:37 in the morning  12       the first time that she sees something out of  13       whack on the pressures.  14       MR. BRANTINGHAM: Well just object to  15       the form of the question with respect to the  16       phrase "out of whack."  17       <b>A. There is another time where the</b>  18       <b>pressure deviates away from where it was set at.</b>  19       Q. What time?  20       <b>A. 1:33.</b>  21       Q. Are you talking about it going from 75  22       to 81?  23       <b>A. Yes.</b>  24       Q. That wasn't while you were in the car;  25       was it?</p>
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<p>1       that it made you say this wasn't a very happy  2       heart? That's not what happened; is it?  3       MR. BRANTINGHAM: Object to the form of  4       the question.  5       <b>A. I'm not sure what I would have meant.</b>  6       Q. Yeah. How about pressures? If the  7       pressures were out of whack, what column would  8       we be looking at?  9       <b>A. The AOP Mean.</b>  10       Q. Is that something that you actually  11       have the ability to control on the machine?  12       Right?  13       <b>A. Yes.</b>  14       Q. Yeah. Anything on the pressures that  15       look like they're outside of parameters?  16       <b>A. (Witness reviewing.)</b>  17       <b>Periodically the pressures do come out</b>  18       <b>of what we have it set at.</b>  19       Q. Tell me where you're seeing that.  20       <b>A. Such as this 90.</b>  21       Q. Tell me what row number you're on or  22       give me -- better yet, give us a time.  23       <b>A. 2:37.</b>  24       Q. 2:37 a.m.?  25       <b>A. Yes.</b></p>	<p>1       <b>A. Most likely not.</b>  2       Q. Yeah. It was when you were on the  3       airplane.  4       Can you and I agree that there is  5       absolutely nothing with the flows or the  6       pressures, from the time that you left the  7       hospital in Idaho to the time that you got to  8       the airport in Idaho, that is in any way outside  9       of what you would have expected?  10       <b>A. Yes.</b>  11       Q. You agree with me.  12       <b>A. Yes.</b>  13       Q. And so when you said the heart was not  14       a very happy heart during the car rides, at  15       least when it was going to the airplane in  16       Idaho, you weren't talking about the flows and  17       the pressures; were you?  18       <b>A. That's the main thing that we can see.</b>  19       Q. Yeah. Well that and the lactates;  20       right?  21       <b>A. Yes.</b>  22       Q. And the subjective way that the heart  23       looks while it's beating in the box; right?  24       <b>A. Yes.</b>  25       Q. So again, if there's nothing wrong with</p>

13 (Pages 46 to 49)

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<p>1 the flows and there's nothing wrong with the</p> <p>2 pressures and there's nothing wrong with the</p> <p>3 lactates, the only thing that could be happening</p> <p>4 to make you say it wasn't the most robust heart</p> <p>5 and it wasn't a very happy heart was that there</p> <p>6 was something going on with the way it</p> <p>7 physically looked; right?</p> <p>8 MR. BRANTINGHAM: Object to the form of</p> <p>9 the question.</p> <p>10 <b>A. I do not recall anything abnormal about</b></p> <p>11 <b>how it looked --</b></p> <p>12 Q. Wasn't --</p> <p>13 <b>A. -- during the car ride.</b></p> <p>14 Q. Wasn't my question.</p> <p>15 If the flows and the pressures and the</p> <p>16 lactate all looked good, the only thing that you</p> <p>17 could be referring to, when you say it wasn't</p> <p>18 the most robust and it wasn't very happy, would</p> <p>19 be the way that it looked physically while it</p> <p>20 was beating in the box; isn't that true?</p> <p>21 MR. BRANTINGHAM: Same objection.</p> <p>22 Q. And if there's something else, then I'm</p> <p>23 going to ask you what it is.</p> <p>24 <b>A. The flows and pressures are not</b></p> <p>25 <b>captured at all times on here, and therefore you</b></p>	<p>1 MR. BRANTINGHAM: Is the question again</p> <p>2 what the text message said?</p> <p>3 MR. THOMPSON: Make an objection.</p> <p>4 MR. BRANTINGHAM: I object --</p> <p>5 MR. THOMPSON: Don't ask me a question.</p> <p>6 I'm not interested in your questions.</p> <p>7 MR. BRANTINGHAM: I object as asked and</p> <p>8 answered repeatedly.</p> <p>9 MR. THOMPSON: Great.</p> <p>10 Q. I'll take an answer.</p> <p>11 MR. BRANTINGHAM: I object to the form.</p> <p>12 I object as asked and answered. Go ahead.</p> <p>13 Q. Look, I know that you don't want to</p> <p>14 admit that when you sent this text message what</p> <p>15 you probably meant was that there was something</p> <p>16 about the way that that heart function looked</p> <p>17 that wasn't the most robust and it wasn't very</p> <p>18 happy. I get that. But can't you and I agree</p> <p>19 that there's no other rational explanation for</p> <p>20 why you would have sent that text message?</p> <p>21 Because the objective data all looks good.</p> <p>22 MR. BRANTINGHAM: I object to the form</p> <p>23 of the question. I object to the preamble to</p> <p>24 the question and the attempt to influence the</p> <p>25 witness. You can answer, Ms. Fay.</p>
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<p>1 <b>can have it go out of range peri -- for a slight</b></p> <p>2 <b>little bit and it not be captured.</b></p> <p>3 Q. Uh-huh.</p> <p>4 <b>A. As far as how it looked, I don't recall</b></p> <p>5 <b>anything.</b></p> <p>6 Q. That doesn't mean that there wasn't</p> <p>7 something going on with it, it just means you</p> <p>8 don't remember; right?</p> <p>9 MR. BRANTINGHAM: Object to the form</p> <p>10 and the -- and foundation. I think it</p> <p>11 explicitly calls for speculation.</p> <p>12 <b>A. The main thing I look at is flows,</b></p> <p>13 <b>pressures, and lactates.</b></p> <p>14 Q. No. Ms. Fay, I get that. I understand</p> <p>15 that. And when we look at the main things that</p> <p>16 you look at, all of the objective data looks</p> <p>17 really good. Right?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. And that's what you were specifically</p> <p>20 telling Megan and Alex, "Look, the objective</p> <p>21 data for this heart looked really good;" right?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. But despite the objective data looking</p> <p>24 really good, it wasn't the most robust heart and</p> <p>25 it wasn't a very happy heart; right?</p>	<p>1 <b>A. Other than the lactates, the flows, and</b></p> <p>2 <b>the pressures, the only other things is looking</b></p> <p>3 <b>at the heart.</b></p> <p>4 Q. So now let's go back to the airplane.</p> <p>5 There would be one of two ways that the surgeons</p> <p>6 could be alerted to the fact that the heart</p> <p>7 didn't look good. One would be if they were</p> <p>8 awake and they saw it, but we know they weren't</p> <p>9 awake; right?</p> <p>10 <b>A. They were for part of it.</b></p> <p>11 Q. Well in your text messages you said</p> <p>12 that they were asleep for -- I want to make sure</p> <p>13 I don't misquote you -- "They were asleep most</p> <p>14 of the time" is what you texted to Megan and</p> <p>15 Michael Pick; right? That's page 25083.</p> <p>16 <b>A. I did text that.</b></p> <p>17 Q. And then on 25075 you texted Adam Skow</p> <p>18 "2 people who were asleep for the almost 3 hour</p> <p>19 flight." Do you see that?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. For how much of that flight do you</p> <p>22 think Dr. Knop and Dr. Altarabsheh were actually</p> <p>23 awake?</p> <p>24 <b>A. I don't recall.</b></p> <p>25 Q. The other way that they could have been</p>

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<p style="text-align: right;">Page 54</p> <p>1 alerted to the fact that the heart didn't look</p> <p>2 happy and/or wasn't robust is if either you or</p> <p>3 Megan would have told them; right?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. Do you think you told them?</p> <p>6 <b>A. They saw the heart when they got on the</b></p> <p>7 <b>plane. Whenever they woke up they saw the</b></p> <p>8 <b>heart. We would tell them if we were not able</b></p> <p>9 <b>to keep the flows and pressures where they</b></p> <p>10 <b>should be and if the lactates were not</b></p> <p>11 <b>responding as they should be.</b></p> <p>12 Q. [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 Q. Tell me what you meant to convey with</p> <p>19 that.</p> <p>20 <b>A. That they didn't see the whole trend of</b></p> <p>21 <b>the lactate, which is the most important part.</b></p> <p>22 Q. There's two parts of the lactate trend</p> <p>23 that we're looking at; right?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. One is we want to -- we don't want to</p>	<p style="text-align: right;">Page 56</p> <p>1 the fact that the lactates here never got above</p> <p>2 three makes you and some other people feel</p> <p>3 pretty good about at least that objective</p> <p>4 measurement; fair?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. Particularly in combination with the</p> <p>7 fact that the arterial, at least for the last</p> <p>8 several, was higher than the venous; true?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. All right. Why is it that you're</p> <p>11 supposed to get a hematocrit from the donor</p> <p>12 before the heart's put on the OCS?</p> <p>13 <b>A. The exact reason, I'm not sure why.</b></p> <p>14 Q. Do you know --</p> <p>15 <b>A. The surgeons are in charge of that.</b></p> <p>16 Q. The surgeons are in charge of that?</p> <p>17 <b>A. Uh-huh.</b></p> <p>18 Q. Yes?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. You know the hematocrit is supposed to</p> <p>21 be where?</p> <p>22 <b>A. Ideally we want it greater than 25.</b></p> <p>23 Q. When you did your OCS training, did you</p> <p>24 read the part of the manual that talks about</p> <p>25 safety information and says "The following</p>
<p style="text-align: right;">Page 55</p> <p>1 see a lactate that's increasing overall; right?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. And the other is that we want to see</p> <p>4 the arterial lactate greater than the venous</p> <p>5 lactate; right?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. If a lactate is increasing, is that</p> <p>8 still cause for concern even if the arterial is</p> <p>9 greater than the venous?</p> <p>10 MR. BRANTINGHAM: Form, foundation. Go</p> <p>11 ahead.</p> <p>12 <b>A. It's expect -- it --</b></p> <p>13 <b>That happens and we use our guidelines</b></p> <p>14 <b>to correct it.</b></p> <p>15 Q. So I think the answer to my question</p> <p>16 is -- and let me just see if I can put a</p> <p>17 slightly different spin on it -- presumably</p> <p>18 there are some lactates where, if it gets that</p> <p>19 high, it is a concern. If you got a lactate of</p> <p>20 7, you probably don't care even if -- even if</p> <p>21 the arterial's higher than the venous. That's</p> <p>22 still a big deal; right?</p> <p>23 <b>A. It is cause for concern, yes.</b></p> <p>24 Q. I'm gathering from some of your</p> <p>25 testimony and from a lot of these text messages,</p>	<p style="text-align: right;">Page 57</p> <p>1 conditions may negatively impact perfusion."</p> <p>2 One of them is a donor hematocrit less than</p> <p>3 25 percent. Do you see that?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. "Low donor hematocrit should be managed</p> <p>6 by transfusing packed red cells prior to donor</p> <p>7 blood collection." See that?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. Now you draw a hematocrit when you</p> <p>10 prime the machine; right?</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. Do you remember what the hematocrit was</p> <p>13 when you primed the machine for this one?</p> <p>14 <b>A. No.</b></p> <p>15 Q. If it was 21, would that be cause for</p> <p>16 concern?</p> <p>17 <b>A. It's something we take note of.</b></p> <p>18 Q. You didn't take note of it though; did</p> <p>19 you?</p> <p>20 <b>A. I don't recall.</b></p> <p>21 Q. Do you know if the surgeons took note</p> <p>22 of it?</p> <p>23 <b>A. I don't recall.</b></p> <p>24 Q. Okay. Let's go back to the Excel</p> <p>25 spreadsheet printout.</p>

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<p>1       <b>A. (Witness complying.)</b></p> <p>2       Q. And I want to go to -- 22:33 is the</p> <p>3       time I want you to look at.</p> <p>4       <b>A. (Witness complying.)</b></p> <p>5       Q. Let me know when you're there.</p> <p>6       MR. BRANTINGHAM: What line is that on</p> <p>7       the Excel?</p> <p>8       MR. THOMPSON: Oh, I don't know. I'm</p> <p>9       looking at a different piece of paper.</p> <p>10      Twenty -- 23:33, I'm sorry, so 55. Row 55.</p> <p>11      Q. Are you there?</p> <p>12      <b>A. Yes.</b></p> <p>13      Q. At 23:33 either you or Ms. Osterhaus</p> <p>14      turned on the ECG Sync Mode; right?</p> <p>15      <b>A. Yes.</b></p> <p>16      Q. It was not on EC -- ECG Sync before</p> <p>17      that; was it?</p> <p>18      <b>A. No.</b></p> <p>19      Q. Now you are trained that there's four</p> <p>20      different scenarios when ECG Sync Mode would be</p> <p>21      used; right?</p> <p>22      <b>A. We have been taught we almost always</b></p> <p>23      <b>turn it on.</b></p> <p>24      Q. Okay. Were you trained that there's</p> <p>25      four different ways to manage the heart once it</p>	<p>1       Which one of those scenarios in your</p> <p>2       training materials say "Set Sync mode and</p> <p>3       increase the flow?"</p> <p>4       MR. BRANTINGHAM: I'll object to the</p> <p>5       form of the question.</p> <p>6       MR. THOMPSON: What's wrong with the</p> <p>7       form of the question?</p> <p>8       MR. BRANTINGHAM: You're asking her to</p> <p>9       identify something on this document?</p> <p>10      MR. THOMPSON: Yeah.</p> <p>11      MR. BRANTINGHAM: Okay.</p> <p>12      MR. THOMPSON: I think that was pretty</p> <p>13      obvious, but go ahead.</p> <p>14      <b>A. None of them say increase flow.</b></p> <p>15      Q. Is it typical for you to set the ECG</p> <p>16      Sync Mode and then turn up the flow?</p> <p>17      <b>A. Turn it up? No.</b></p> <p>18      Q. Why would you be increasing the</p> <p>19      pulmonary flow at 23:33?</p> <p>20      <b>A. I don't recall doing that.</b></p> <p>21      Q. What would be the reasons for</p> <p>22      increasing the pulmonary flow?</p> <p>23      <b>A. To help the lactate.</b></p> <p>24      Q. Do you know why your training materials</p> <p>25      don't say anything about setting the ECG Sync</p>
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<p>1       goes into ECG Sync Mode?</p> <p>2       This is from your own documents. This</p> <p>3       is page 24626. "4 Scenarios to use sync mode."</p> <p>4       Have you ever seen this before?</p> <p>5       <b>A. Yes.</b></p> <p>6       Q. Okay. When is the last time you think</p> <p>7       you saw that?</p> <p>8       <b>A. I'm not sure.</b></p> <p>9       Q. Okay. If there is "Good lactates, Set</p> <p>10      Sync mode and decrease flow." What would we be</p> <p>11      talking about when it says "decrease flow?"</p> <p>12      <b>A. Decrease the perfusion flow.</b></p> <p>13      Q. Perfusion flow. Okay.</p> <p>14      If --</p> <p>15      <b>A. Or the pump flow.</b></p> <p>16      Q. If the "Lactates are OK but not great,</p> <p>17      Set Sync mode and leave flow the same." See</p> <p>18      that?</p> <p>19      <b>A. Yes.</b></p> <p>20      Q. Okay. What was going on with the flow</p> <p>21      in the ten minutes or so after either you or Ms.</p> <p>22      Osterhaus turned on ECG Sync Mode? It's on the</p> <p>23      document right in front of you there.</p> <p>24      <b>A. They increased slightly.</b></p> <p>25      Q. Uh-huh.</p>	<p>1       Mode and then turning up the flow?</p> <p>2       <b>A. You're asking why it doesn't?</b></p> <p>3       Q. I'm asking if you know.</p> <p>4       <b>A. No.</b></p> <p>5       Q. Okay. If the lactates are okay but not</p> <p>6       great --</p> <p>7       And you're telling me that the reason</p> <p>8       why you would be turning up the pulmonary flow</p> <p>9       is to improve the lactates; right?</p> <p>10      <b>A. Yes.</b></p> <p>11      Q. So what you're supposed to do, if the</p> <p>12      lactates are okay but not great, is to set the</p> <p>13      Sync Mode and then leave the flow the same;</p> <p>14      right?</p> <p>15      <b>A. Yes, initially.</b></p> <p>16      Q. Why didn't you do that?</p> <p>17      <b>A. I don't recall turning it up.</b></p> <p>18      Q. You said that the reason that it would</p> <p>19      be turned up would be to improve the lactates.</p> <p>20      Is that --</p> <p>21      Did I understand you correctly?</p> <p>22      <b>A. Yes.</b></p> <p>23      Q. Do you know what the lactates were at</p> <p>24      that particular point in time?</p> <p>25      <b>A. Now right off.</b></p>

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<p style="text-align: right;">Page 62</p> <p>1 Q. I'm going to hand you 24890. The</p> <p>2 arterial lactate at 23:26 was 1.35; right?</p> <p>3 A. Yes.</p> <p>4 Q. And the venous lactate, five minutes</p> <p>5 later, at 23:31 was 1.49; right?</p> <p>6 A. Yes.</p> <p>7 Q. That means that the heart is producing</p> <p>8 lactate; true?</p> <p>9 A. True.</p> <p>10 Q. And so that would probably be why you</p> <p>11 turned up the pulmonary flow, because you</p> <p>12 noticed that this heart was producing lactate</p> <p>13 and you were trying to stop it from producing</p> <p>14 lactate; right?</p> <p>15 MR. BRANTINGHAM: Foundation. You can</p> <p>16 answer.</p> <p>17 A. That would be why we turned it up, but</p> <p>18 I don't recall turning it up.</p> <p>19 Q. No. That's fair.</p> <p>20 Is there any other reason that you can</p> <p>21 think of why you would turn up the pulmonary</p> <p>22 flow?</p> <p>23 A. To bring it back into range if it</p> <p>24 happened to be out of range.</p> <p>25 Q. If it was below the range it should be</p>	<p style="text-align: right;">Page 64</p> <p>1 after the second lactate.</p> <p>2 Q. That was the second lactate.</p> <p>3 The first lactate -- the first arterial</p> <p>4 lactate was taken at 23:26 and it was 1.35.</p> <p>5 A. Yes.</p> <p>6 Q. And then the second arterial lactate</p> <p>7 was taken at 23:49 and that was 1.87. That is</p> <p>8 an increase in the lactate; right?</p> <p>9 A. Yes.</p> <p>10 Q. And what you're supposed to do, if the</p> <p>11 lactate is going up, is increase -- you said</p> <p>12 either increase the pressure or increase the</p> <p>13 flow?</p> <p>14 A. Yes.</p> <p>15 Q. You didn't do either one of those</p> <p>16 things; did you?</p> <p>17 A. (Witness reviewing.)</p> <p>18 Q. You're looking at the lactates. You</p> <p>19 got to look at the Excel spreadsheet to answer</p> <p>20 my question.</p> <p>21 The pulmonary flow two minutes after</p> <p>22 you do the lactate was 1.04, and that's what it</p> <p>23 was two minutes before you took the lactate;</p> <p>24 right?</p> <p>25 A. What time are we looking at?</p>
<p style="text-align: right;">Page 63</p> <p>1 in.</p> <p>2 A. Yes.</p> <p>3 Q. And we know that wasn't the case here;</p> <p>4 right?</p> <p>5 A. Yes.</p> <p>6 Q. What are the increments for pulmonary</p> <p>7 flow, like can it go up .01 at a time?</p> <p>8 A. Without the document, I can't tell you</p> <p>9 the exact increment.</p> <p>10 Q. Okay. At 23:49 the lactate was 1.87;</p> <p>11 right?</p> <p>12 A. Yes.</p> <p>13 Q. That is an increase from where the</p> <p>14 lactate had been the last time you checked it;</p> <p>15 right?</p> <p>16 A. Yes.</p> <p>17 Q. What are you supposed to do if the</p> <p>18 lactate is increasing?</p> <p>19 A. We will either turn up flows or turn up</p> <p>20 pressures.</p> <p>21 Q. You didn't turn up the flow; did you?</p> <p>22 The flow at 23:51, two minutes after</p> <p>23 you took the lactate, was 1.04, and that's what</p> <p>24 it was right before you took the lactate; right?</p> <p>25 A. We wouldn't have done anything until</p>	<p style="text-align: right;">Page 65</p> <p>1 Q. 23:49.</p> <p>2 A. Okay.</p> <p>3 Q. And at 23:49, the pressure was set at</p> <p>4 what? Seventy-five.</p> <p>5 A. Okay.</p> <p>6 Q. Which is where it starts; right?</p> <p>7 A. Yes.</p> <p>8 Q. You know that your training tells you</p> <p>9 that if there's an increasing lactate, you're</p> <p>10 supposed to increase that pressure to 80 and</p> <p>11 recheck the lactate within five to ten minutes;</p> <p>12 right?</p> <p>13 A. Per the document, yes.</p> <p>14 Q. Well I mean per the document and per</p> <p>15 your training. That's what you're supposed to</p> <p>16 do. That's what you're taught to do; right?</p> <p>17 A. Yes.</p> <p>18 Q. You didn't do that; did you?</p> <p>19 A. I don't recall what we did.</p> <p>20 Q. Well but we can --</p> <p>21 The -- the data is saved and</p> <p>22 downloaded, and so we can see exactly what you</p> <p>23 did and didn't do. Right? That's a compound</p> <p>24 question.</p> <p>25 The data is downloaded and saved;</p>

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<p>1 right?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. And the fact that the data is</p> <p>4 downloaded and saved means we can see exactly</p> <p>5 what you did and didn't do; right?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. And what you didn't do is increase the</p> <p>8 flow; right?</p> <p>9 <b>A. (Witness reviewing.)</b></p> <p>10 Q. You just got to look at the document.</p> <p>11 The flow stayed at 1.04; right?</p> <p>12 <b>A. At 23:39.</b></p> <p>13 Q. Not looking at 23:39.</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. We're looking at 23:51, which is right</p> <p>16 after you drew the lactate that showed the</p> <p>17 lactate was increasing, --</p> <p>18 <b>A. Okay.</b></p> <p>19 Q. -- you left the pulmonary flow at 1.04;</p> <p>20 right?</p> <p>21 <b>A. We increased it at 23:57.</b></p> <p>22 Q. That wasn't my question. We're going</p> <p>23 to get there.</p> <p>24 The pulmonary flow stayed at 1.04 after</p> <p>25 you drew that arterial lactate -- the second</p>	<p>1 changes to the pump; is that what you said?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. So the pressure, after you got that</p> <p>4 venous lactate at 23:54, what did you do with</p> <p>5 the pressure?</p> <p>6 <b>A. We left it the same.</b></p> <p>7 Q. Left it the same.</p> <p>8 You know that that is contrary to your</p> <p>9 training; right? Do you know that that's</p> <p>10 contrary to your training?</p> <p>11 You do know that what your training</p> <p>12 tells you and what the manufacturer tells you is</p> <p>13 that if there's a rising lactate, you move the</p> <p>14 pressure up to 80 and you recheck the lactate in</p> <p>15 five to ten minutes; right?</p> <p>16 And if your answer is actually "I don't</p> <p>17 know what I'm supposed to do," you can answer it</p> <p>18 that way, too.</p> <p>19 <b>A. I don't know why we went up on flows</b></p> <p>20 <b>instead of the pressure.</b></p> <p>21 Q. Wasn't my question. My question's</p> <p>22 actually super, super simple, and on -- you've</p> <p>23 just got to answer that and not think too deep</p> <p>24 into it.</p> <p>25 You know that what your training tells</p>
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<p>1 arterial lactate that showed the lactate was</p> <p>2 going up; right?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. You also left the pressure set at 75,</p> <p>5 even though your training tells you to change it</p> <p>6 to 80; right?</p> <p>7 <b>A. We don't change anything till after the</b></p> <p>8 <b>venous so we see if it's absorbing or secreting.</b></p> <p>9 Q. Great. So when you checked the venous</p> <p>10 at 23:54, that showed a venous lactate of 2.06;</p> <p>11 right?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. The venous lactate was also going up;</p> <p>14 was it not?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. The venous lactate is still greater</p> <p>17 than the arterial lactate; is it not?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. What does that mean?</p> <p>20 <b>A. That the heart's secreting lactate.</b></p> <p>21 Q. Not what you want to see; right?</p> <p>22 <b>A. Correct.</b></p> <p>23 Q. Okay. Now you said that what you're</p> <p>24 supposed to do is you wait to see what happens</p> <p>25 with the venous lactate and then you make the</p>	<p>1 you you're supposed to do and what the manual</p> <p>2 tells you you're supposed to do is if there's an</p> <p>3 increasing lactate, you increase the pressure to</p> <p>4 80; right?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. And what you're also supposed to do is</p> <p>7 recheck the lactate within five to ten minutes;</p> <p>8 right?</p> <p>9 <b>A. Per the guideline, yes.</b></p> <p>10 Q. Yeah. Per the guideline, per the</p> <p>11 manufacturer, per your own training; right?</p> <p>12 <b>A. Yes. That is what we are supposed to</b></p> <p>13 <b>do.</b></p> <p>14 Q. But as for why you didn't do what your</p> <p>15 training says you're supposed to do, what the</p> <p>16 guideline says you're supposed to do, and what</p> <p>17 the manufacturer says you're supposed to do, you</p> <p>18 just don't know; fair?</p> <p>19 <b>A. We are not able to draw lactates and</b></p> <p>20 <b>recheck them during transports -- or during the</b></p> <p>21 <b>transport in the vehicle or anything like that.</b></p> <p>22 <b>So if it was during that time, we can't draw</b></p> <p>23 <b>them in five to ten minutes.</b></p> <p>24 Q. You mean like while you're carrying the</p> <p>25 thing into the airplane?</p>

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<p style="text-align: right;">Page 70</p> <p>1 <b>A. Or in the vehicle to and from the</b>  2 <b>airport.</b>  3 Q. You're not able to do it?  4 <b>A. No.</b>  5 Q. Why not?  6 <b>A. The heart is typically, if we're in an</b>  7 <b>SUV -- I don't remember where --</b>  8 <b>I don't remember where we were or what</b>  9 <b>vehicle we had, but if we physically can't get</b>  10 <b>to the ports to draw them, we can't draw them.</b>  11 Q. Okay. Now the pump pressure stays the  12 same. Certainly being in the SUV wouldn't  13 prevent you from turning up the pump pressure;  14 right?  15 <b>A. Correct.</b>  16 Q. So then at 00:31 you draw another  17 lactate, and that's 2.62; right?  18 <b>A. Yes.</b>  19 Q. Now that is an increase from the last  20 lactate and it's also an increase from the first  21 lactate; true?  22 <b>A. True.</b>  23 Q. In other words, the lactate is  24 continuing to rise; right?  25 <b>A. Yes.</b></p>	<p style="text-align: right;">Page 72</p> <p>1 <b>A. I wouldn't have ignored it.</b>  2 Q. Okay. Then you must not have actually  3 looked at the document.  4 <b>A. I don't recall what happened --</b>  5 Q. I understand that.  6 <b>A. -- at that point.</b>  7 Q. Well but what we know for sure didn't  8 happen is you didn't increase the pump flow;  9 right? And you also didn't increase the  10 pressure.  11 MR. BRANTINGHAM: Object to the  12 compound question.  13 Q. I'll break it up.  14 You didn't increase the pressure from  15 75 to 80 yet again; right?  16 <b>A. Correct.</b>  17 Q. And you, this time, also didn't even  18 change the pulmonary flow; right?  19 <b>A. I -- I don't know if we did or not.</b>  20 <b>It's not --</b>  21 Q. Well we know you didn't because it's in  22 the document.  23 MR. BRANTINGHAM: Let her finish her  24 answer, please. Go ahead and finish your  25 answer.</p>
<p style="text-align: right;">Page 71</p> <p>1 Q. Now here again with that rising  2 lactate, you're supposed to change the pump  3 pressure to 80; right?  4 <b>A. If that's what my document says to do.</b>  5 Q. Now you -- you --  6 Well I mean do you have this document  7 with you when you're doing one of these runs?  8 <b>A. Yes.</b>  9 Q. Do you act --  10 Do you have to go and look in the  11 document every time you draw a lactate?  12 <b>A. When I need to know what the next step</b>  13 <b>is, I look at the document, yes.</b>  14 Q. Fair. And that's good. That's why we  15 have documents and checklists, things like that.  16 But my first question is: Is this the  17 sort of thing that you would have to go and look  18 in the document to know what to do?  19 <b>A. I reference it, yes.</b>  20 Q. Okay. So what you would have done then  21 is you would have gone and actually looked in  22 the document, seen what you were supposed to do,  23 and then ignore it.  24 MR. BRANTINGHAM: Object to the form of  25 the question.</p>	<p style="text-align: right;">Page 73</p> <p>1 <b>A. This doesn't show that we actually</b>  2 <b>turned the knob and set it. It's telling us</b>  3 <b>what the flows started doing. So even if we did</b>  4 <b>increase it, it didn't -- doesn't seem that it</b>  5 <b>increased it, but it doesn't mean that we didn't</b>  6 <b>turn it to try to get it up.</b>  7 Q. So what we see on this printout is  8 the -- the readout of what the actual flow is?  9 <b>A. Yes.</b>  10 Q. Not where you've set it on the machine.  11 <b>A. Yes.</b>  12 Q. Isn't part of your job that if you set  13 the flow at, say, 1.15, but the actual flow is  14 only at 1.1, you got a problem that needs to be  15 dealt with; right?  16 <b>A. Well we set them and then wait to see</b>  17 <b>what happens, because there is other -- there is</b>  18 <b>other medications that also were working in the</b>  19 <b>background to get us to wherever we have it set.</b>  20 Q. Wherever you set it, what we know is  21 that the pump -- the pulmonary flow did not go  22 up. I mean we've got the data right there;  23 right?  24 <b>A. It did eventually go up.</b>  25 Q. When?</p>

19 (Pages 70 to 73)



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<p>1       <b>A. At --</b></p> <p>2       <b>So going from 1.09, it went to 1.1 to</b></p> <p>3       <b>1.11 to 1.2.</b></p> <p>4       Q. Right. So I'm sticking now -- we're --</p> <p>5       You're back in time. I'm at lactate</p> <p>6       number three at 12:30 -- or 12:31 in the</p> <p>7       morning, second consecutive lactate that is</p> <p>8       increased. I'm looking at pulmonary flows and</p> <p>9       I'm seeing that 1.1, 1.11, 1.11, 1.12, 1.12,</p> <p>10      1.12, 1.13, back down to 1.12. You see what I'm</p> <p>11      talking about?</p> <p>12      <b>A. I do.</b></p> <p>13      Q. Yeah.</p> <p>14      Now again, the major point here is your</p> <p>15      training doesn't tell you to increase the</p> <p>16      pulmonary flow, your training tells you to</p> <p>17      increase the pressure; right?</p> <p>18      MR. BRANTINGHAM: I think that's been</p> <p>19      asked and answered.</p> <p>20      <b>A. Yes.</b></p> <p>21      Q. And very definitively, even after this</p> <p>22      third lactate, you didn't increase the pressure;</p> <p>23      right?</p> <p>24      <b>A. No.</b></p> <p>25      Q. You also, yet again, didn't check</p>	<p>1       Q. Why didn't you now, for the fourth</p> <p>2       time, increase the pressure?</p> <p>3       MR. BRANTINGHAM: Just object to</p> <p>4       foundation, form.</p> <p>5       <b>A. I don't know.</b></p> <p>6       Q. Can you and I agree that, at least now</p> <p>7       with the third consecutive increasing lactate,</p> <p>8       you should have increased the pressure as the</p> <p>9       manual and your training and the guideline tell</p> <p>10      you to do?</p> <p>11      <b>A. I don't know why we wouldn't have.</b></p> <p>12      Q. My question was: Don't you think you</p> <p>13      should have done what your training tells you to</p> <p>14      do and what the manual tells you to do?</p> <p>15      <b>A. Yeah.</b></p> <p>16      Q. Let's jump ahead to 1:33.</p> <p>17      <b>A. (Witness complying.)</b></p> <p>18      Q. Now for some reason at 1:33, that's</p> <p>19      row 115, you do increase the pressure for two</p> <p>20      minutes and then it goes right back down. Do</p> <p>21      you think that -- what do you --</p> <p>22      Did the machine get bumped, or what do</p> <p>23      you think happened there?</p> <p>24      <b>A. We didn't --</b></p> <p>25      <b>We wouldn't have turned it up and</b></p>
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<p>1       another lactate within five to ten minutes as</p> <p>2       you're supposed to do when there's an increasing</p> <p>3       lactate; right?</p> <p>4       <b>A. If we didn't check it, there was a --</b></p> <p>5       <b>due to transport or what have you, there was --</b></p> <p>6       <b>and we weren't able to.</b></p> <p>7       Q. We know that you were able to draw a</p> <p>8       lactate at 12:31 in the morning; right?</p> <p>9       <b>A. Yes.</b></p> <p>10      Q. Okay. So what would be the reason why</p> <p>11      you wouldn't have been able to draw a lactate</p> <p>12      five minutes later?</p> <p>13      <b>A. I don't recall the reason.</b></p> <p>14      Q. Well especially since we know that you</p> <p>15      did draw a venous lactate four minutes later --</p> <p>16      <b>A. Yes.</b></p> <p>17      Q. -- because it's on there.</p> <p>18      Go now to 1:00 o'clock in the morning,</p> <p>19      1:04 to be precise. Now you draw the fourth</p> <p>20      lactate. It's a half hour later instead of five</p> <p>21      to ten minutes later and now the lactate has</p> <p>22      gone from 2.62 to 2.79; right?</p> <p>23      <b>A. Yes.</b></p> <p>24      Q. The lactate is still increasing; right?</p> <p>25      <b>A. Yes.</b></p>	<p>1       <b>turned it back down.</b></p> <p>2       Q. Okay. At 1:39 in the morning you take</p> <p>3       the fifth lactate. Now the lactate is 2.87. It</p> <p>4       is, yet again, increasing; right?</p> <p>5       <b>A. Yes.</b></p> <p>6       Q. And what's your training tell you to</p> <p>7       do?</p> <p>8       <b>A. I would have to reference that.</b></p> <p>9       Q. Well probably the same thing that we've</p> <p>10      talked about the last four times, turn the</p> <p>11      pressure up; right?</p> <p>12      <b>A. Uh-huh.</b></p> <p>13      Q. Yes? You got to say "yes," not</p> <p>14      "uh-huh."</p> <p>15      <b>A. Yes.</b></p> <p>16      Q. Now at 2:03, for the first time, the</p> <p>17      lactate looks like it's stabilized; right?</p> <p>18      <b>A. Yes.</b></p> <p>19      Q. Is the --</p> <p>20      Do you know what the phrase "delta</p> <p>21      between the venous and the arterial lactates"</p> <p>22      mean?</p> <p>23      <b>A. Yes.</b></p> <p>24      Q. Is that relevant?</p> <p>25      <b>A. As long as it is decreasing, that's</b></p>

20 (Pages 74 to 77)

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<p style="text-align: right;">Page 78</p> <p>1 <b>what we're looking at.</b></p> <p>2 Q. As long as what is decreasing?</p> <p>3 <b>A. As long as the difference between the</b></p> <p>4 <b>arterial and venous lactates are decreasing or</b></p> <p>5 <b>increasing, that is what we're looking at.</b></p> <p>6 Q. Well which is it, you want them -- you</p> <p>7 want the delta to decrease or the delta to</p> <p>8 increase?</p> <p>9 <b>A. We want the venous lactates to be less</b></p> <p>10 <b>than the arterial lactates.</b></p> <p>11 Q. If the gap --</p> <p>12 Let's say that the venous lactate is</p> <p>13 higher than the art -- or the arterial is higher</p> <p>14 than the venous, that's what you're looking for;</p> <p>15 right?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. Let's say the gap is .1, and then the</p> <p>18 next time you check it the gap is .05 between</p> <p>19 the two. Is that relevant at all?</p> <p>20 <b>A. As long as it's less than, that's what</b></p> <p>21 <b>we're looking for.</b></p> <p>22 Q. You told me way back early in the</p> <p>23 deposition that trends are really important when</p> <p>24 you're on the OCS; right?</p> <p>25 <b>A. Yes.</b></p>	<p style="text-align: right;">Page 80</p> <p>1 MR. BRANTINGHAM: Can we take a break?</p> <p>2 MR. THOMPSON: Sure.</p> <p>3 THE REPORTER: Okay. Off the record.</p> <p>4 (Recess taken from 4:04 p.m. to 4:20</p> <p>5 p.m.)</p> <p>6 THE VIDEOGRAPHER: We're on video.</p> <p>7 THE REPORTER: We're on the record.</p> <p>8 BY MR. THOMPSON:</p> <p>9 Q. So we took about a 15-minute break.</p> <p>10 Without giving me any details -- and give him a</p> <p>11 second so he can object -- did you talk to Mr.</p> <p>12 Brantingham about the subject matter of the</p> <p>13 questions that you've been asked so far?</p> <p>14 MR. BRANTINGHAM: Yeah. I don't</p> <p>15 think -- I think that's privileged. You -- you</p> <p>16 can answer that we spoke. You can't talk about</p> <p>17 the -- the topics.</p> <p>18 Q. Okay. Clearly you talked to him;</p> <p>19 right?</p> <p>20 <b>A. We spoke.</b></p> <p>21 MR. BRANTINGHAM: I -- yeah, that's</p> <p>22 fine. You can say we spoke. Don't -- don't --</p> <p>23 don't otherwise answer questions about our</p> <p>24 communications, and I believe that is privileged</p> <p>25 and I'm asserting that privilege.</p>
<p style="text-align: right;">Page 79</p> <p>1 Q. Okay. Go to 2:41.</p> <p>2 <b>A. (Witness complying.)</b></p> <p>3 Q. You take an arterial lactate at 2:41.</p> <p>4 Why didn't you follow that up with a venous</p> <p>5 lactate?</p> <p>6 <b>A. I don't recall the reason why.</b></p> <p>7 Q. Your training is that you draw both an</p> <p>8 arterial and a venous lactate because it's</p> <p>9 really important to know whether one is larger</p> <p>10 than the other; right?</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. At 1:49 it looks like you actually did,</p> <p>13 for the first time, turn up the flow.</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. Any idea why?</p> <p>16 <b>A. We turned up the pressure.</b></p> <p>17 Q. Pressure. Sorry.</p> <p>18 <b>A. I don't know the exact reason, but</b></p> <p>19 <b>based off of these lactates, we most likely did</b></p> <p>20 <b>it because of that.</b></p> <p>21 Q. What do you mean by that?</p> <p>22 <b>A. Because the blood -- or the arterial</b></p> <p>23 <b>lactate went from 2.79 to 2.87.</b></p> <p>24 MR. BRANTINGHAM: Do you need a break?</p> <p>25 THE WITNESS: Yes.</p>	<p style="text-align: right;">Page 81</p> <p>1 Q. Okay. Were you talking to Mr.</p> <p>2 Brantingham for the entirety of that 15-minute</p> <p>3 break?</p> <p>4 <b>A. No.</b></p> <p>5 Q. And for how long were you talking to</p> <p>6 Mr. Brantingham during that break?</p> <p>7 MR. BRANTINGHAM: You can answer that</p> <p>8 question.</p> <p>9 <b>A. A few minutes.</b></p> <p>10 Q. Okay.</p> <p>11 THE VIDEOGRAPHER: Can we go off the</p> <p>12 record for a second?</p> <p>13 THE REPORTER: Off the record.</p> <p>14 (Discussion off the record.)</p> <p>15 BY MR. THOMPSON:</p> <p>16 Q. Okay. During some of your questioning,</p> <p>17 I got the impression that your primary focus</p> <p>18 is -- with respect to the lactates is checking</p> <p>19 to make sure that the arterial lactate is higher</p> <p>20 than the venous. Did I understand you</p> <p>21 correctly?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. Okay. I'm going to hand you another</p> <p>24 page from your training manual, and this is</p> <p>25 page 24575. And there's a section on there that</p>

21 (Pages 78 to 81)



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<p>1 says "Optimizing Perfusion." Do you see that?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. There's five different bullet points</p> <p>4 under that where it says "In broad terms the OCS</p> <p>5 specialist would like to see." Do you see that?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. The first bullet point is "A stable or</p> <p>8 decreasing trend of lactate;" right?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. You did not have a stable or decreasing</p> <p>11 trend of lactate until the very end of this OCS</p> <p>12 run; isn't that right?</p> <p>13 MR. BRANTINGHAM: Object to form.</p> <p>14 <b>A. The first part of it was not stable --</b></p> <p>15 Q. Well --</p> <p>16 <b>A. -- or decreasing.</b></p> <p>17 Q. -- OCS started at 23:06. Is that</p> <p>18 right?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. When does --</p> <p>21 The OCS stops at 3:20. Is that right?</p> <p>22 Rather than making you fumble for it, I</p> <p>23 will represent to you that on page 2942, the</p> <p>24 medical record indicates that the OCS stop time</p> <p>25 was 3:20. Okay?</p>	<p>1 MR. THOMPSON: I'm going to strike that</p> <p>2 question and I'm going to move to a different</p> <p>3 question.</p> <p>4 Q. You're relying on data when you are</p> <p>5 doing an OCS run; correct?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. The data that you have is that the</p> <p>8 lactate stabilized as of 2:03 a.m.; right?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. Now go back to page 24575. Separate</p> <p>11 from wanting to see a stable or decreasing trend</p> <p>12 of lactate, you also want to see an arterial</p> <p>13 lactate that's greater than a venous lactate;</p> <p>14 true?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. So those are two separate concepts and</p> <p>17 you want to see both; right?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. The third thing you want to see is a</p> <p>20 heart that's in normal sinus rhythm with a heart</p> <p>21 rate between 80 and 90 beats per minute; true?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. The heart rate for this heart was 79,</p> <p>24 and I'm guessing that's close enough to 80 for</p> <p>25 your purposes.</p>
Page 83	Page 85
<p>1 <b>A. Okay.</b></p> <p>2 Q. All right. So just go with me on that.</p> <p>3 So from twenty-three oh --</p> <p>4 Tell me when you think the lactates</p> <p>5 stabilized.</p> <p>6 <b>A. We started seeing the desirable trends</b></p> <p>7 <b>between these two lactates.</b></p> <p>8 Q. At 2:03 in the morning was the first</p> <p>9 time that you had a lactate that was not</p> <p>10 increasing; right?</p> <p>11 <b>A. Correct.</b></p> <p>12 Q. All right. So for the first three</p> <p>13 hours of that four-hour-and-20-minute run you</p> <p>14 did not have a stable or decreasing trend of</p> <p>15 lactate; true?</p> <p>16 <b>A. Sometime after the 1:39 and 1:44</b></p> <p>17 <b>lactate, it stabilized.</b></p> <p>18 Q. You didn't have a stable lactate trend</p> <p>19 until you drew the sixth lactate at 2:03 a.m.;</p> <p>20 right? From a clinical standpoint, you don't</p> <p>21 say oh, well, I don't have a lactate in between,</p> <p>22 so I'm just going to assume it's okay.</p> <p>23 <b>A. That was the --</b></p> <p>24 MR. BRANTINGHAM: Okay. Object to the</p> <p>25 form of the question.</p>	<p>1 <b>A. Yes. It fluctuates -- it deviates</b></p> <p>2 <b>slightly from the 80. Yes.</b></p> <p>3 Q. The fourth bullet point says what?</p> <p>4 <b>A. "Visual inspection shows good</b></p> <p>5 <b>contractility."</b></p> <p>6 Q. So it's not just the -- the surgeon's</p> <p>7 are looking and doing a visual inspection,</p> <p>8 that's one of the bullet points that the OCS</p> <p>9 specialist would like to see; right?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. You're supposed to be looking for</p> <p>12 visual evidence that that heart has good</p> <p>13 contractility; true?</p> <p>14 <b>A. True.</b></p> <p>15 Q. All right. Now a little ways further</p> <p>16 down on that page "Initial Management with</p> <p>17 Normal AOP and CF." Do you see that?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. Your training manual walks you through</p> <p>20 very carefully step by step what you're supposed</p> <p>21 to be doing if you don't see a stable or</p> <p>22 decreasing trend of lactate; right?</p> <p>23 MR. BRANTINGHAM: Object to the form of</p> <p>24 the question.</p> <p>25 <b>A. It gives us a guideline to follow.</b></p>

22 (Pages 82 to 85)

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<p style="text-align: right;">Page 86</p> <p>1 Q. Step by step what you're supposed to</p> <p>2 do; right?</p> <p>3 <b>A. It gives us a guideline to follow.</b></p> <p>4 Q. Are you saying that this is just a</p> <p>5 guideline but you don't need to follow it if you</p> <p>6 don't want to?</p> <p>7 MR. BRANTINGHAM: I'll object to the</p> <p>8 form of the question and the argumentative</p> <p>9 nature of the question.</p> <p>10 <b>A. I'm saying that we will follow this,</b></p> <p>11 <b>but there's other things that could affect when</b></p> <p>12 <b>and what we do.</b></p> <p>13 Q. Fair enough.</p> <p>14 What your training tells you is you're</p> <p>15 not supposed to increase the pulmonary flow as a</p> <p>16 remedy for increasing lactate until after the</p> <p>17 third set of lactates and after you have first</p> <p>18 tried to increase the pressure several times;</p> <p>19 right?</p> <p>20 MR. BRANTINGHAM: Foundation.</p> <p>21 <b>A. Can you rephrase that?</b></p> <p>22 Q. Yeah. We'll just go through it step by</p> <p>23 step.</p> <p>24 Your management strategy is based on</p> <p>25 what you see on the second set of lactates;</p>	<p style="text-align: right;">Page 88</p> <p>1 Q. Okay. So let's stick just with the</p> <p>2 only training that you got. You didn't follow</p> <p>3 it on step one; right?</p> <p>4 <b>A. I do not know why we did not increase</b></p> <p>5 <b>it at that point.</b></p> <p>6 Q. Yeah. Wasn't my question. I know you</p> <p>7 don't know why.</p> <p>8 You didn't follow this training and you</p> <p>9 don't know why; right?</p> <p>10 MR. BRANTINGHAM: Object to the form of</p> <p>11 the question.</p> <p>12 <b>A. There are other factors that go into</b></p> <p>13 <b>when we change things.</b></p> <p>14 Q. What factors go into whether you're</p> <p>15 going to follow your training and increase the</p> <p>16 Auto AOP by five millimeters of mercury if you</p> <p>17 see an increasing lactate on that second draw?</p> <p>18 <b>A. The maintenance could be -- could be</b></p> <p>19 <b>fluctuating in the background. There could be</b></p> <p>20 <b>data that's in between these two minutes that do</b></p> <p>21 <b>not reflect what is being -- what is happening.</b></p> <p>22 <b>The surgeons could tell us something that they</b></p> <p>23 <b>are fine with it. There's a lot of other</b></p> <p>24 <b>things, besides being black and white, as to why</b></p> <p>25 <b>we don't do something when it says to do</b></p>
<p style="text-align: right;">Page 87</p> <p>1 true?</p> <p>2 <b>A. It can be, yes.</b></p> <p>3 Q. The first set of lactates is drawn as a</p> <p>4 baseline; right?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. And then you draw a second set of</p> <p>7 lactates in order to see what the lactate trend</p> <p>8 is; right?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. If the second set of lactates "show</p> <p>11 increasing lactates: Increase Auto AOP by 5</p> <p>12 mmHg;" right?</p> <p>13 <b>A. That's what this says, yes.</b></p> <p>14 Q. You didn't do that; right?</p> <p>15 <b>A. No.</b></p> <p>16 Q. You told me back when we were looking</p> <p>17 at this Excel spreadsheet, "Oh, I didn't do that</p> <p>18 but I increased the pulmonary flow." This</p> <p>19 doesn't tell you to increase the pulmonary flow;</p> <p>20 does it?</p> <p>21 <b>A. In this particular steps, no.</b></p> <p>22 Q. Is there some other training manual or</p> <p>23 some other guideline that you've been provided</p> <p>24 that I should be looking at instead?</p> <p>25 <b>A. No, this is it.</b></p>	<p style="text-align: right;">Page 89</p> <p>1 <b>something.</b></p> <p>2 Q. Okay. Let's go through those.</p> <p>3 What does maintenance fluctuating in</p> <p>4 the background mean?</p> <p>5 <b>A. There's maintenance fluid that</b></p> <p>6 <b>auto-titrates up and down to help stabilize the</b></p> <p>7 <b>flows and coronary pressure -- or the -- the</b></p> <p>8 <b>pressures and the coronary flows.</b></p> <p>9 Q. How does that change the fact that if</p> <p>10 you see an increasing lactate, you're supposed</p> <p>11 to take action to try to stop the lactate from</p> <p>12 continuing to increase?</p> <p>13 <b>A. We're looking at overall trends. We're</b></p> <p>14 <b>not looking at what the number exactly is doing.</b></p> <p>15 Q. The only trend you had after that</p> <p>16 second lactate was that the lactate was going</p> <p>17 up; right?</p> <p>18 <b>A. It always goes up.</b></p> <p>19 Q. Well and if it always goes up, then</p> <p>20 you're always supposed to increase the Auto AOP</p> <p>21 by five millimeters of mercury and you shouldn't</p> <p>22 have had to look in the manual to know that;</p> <p>23 right?</p> <p>24 MR. BRANTINGHAM: Object to the form of</p> <p>25 the question. You can answer.</p>

23 (Pages 86 to 89)

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<p style="text-align: right;">Page 90</p> <p>1       <b>A. We don't necessarily change something</b>  2       <b>while we're in transit from the hospital to the</b>  3       <b>plane.</b>  4       Q. I'm going to go back to my question.  5       Your testimony, I think, was that for  6       the second set of lactates, it always has  7       increased from the first. Is that your  8       testimony?  9       <b>A. Every heart I have ever had, it always</b>  10       <b>increases. Yes.</b>  11       Q. Okay. So then shouldn't it have been a  12       very --  13       Shouldn't you automatically then, after  14       the second set of lactates, be ready to increase  15       the pressure? Because you've supposed to have  16       done that for literally every single heart you  17       have ever transported on OCS.  18       <b>A. We need to wait for the flows and</b>  19       <b>pressures and the maintenance to regulate.</b>  20       Q. Is there something on this data  21       printout that shows that something wasn't  22       regulated that was preventing you from changing  23       the pressure?  24       <b>A. There's only data points every two</b>  25       <b>minutes.</b></p>	<p style="text-align: right;">Page 92</p> <p>1       <b>pressures to stabilize so that we can get a good</b>  2       <b>idea of what is actually going on with the</b>  3       <b>heart.</b>  4       Q. But if we look at the data, the flows  5       and the pressures were perfectly stabilized;  6       right?  7       <b>A. But in between these two minutes,</b>  8       <b>this -- there is -- they're only gathering data</b>  9       <b>every two minutes. When you hit bumps, when</b>  10       <b>we're moving it, those things will change.</b>  11       Q. So again, back to an earlier question.  12       How long are you going to wait? Because what I  13       see here is you draw the second lactate at 23:49  14       that shows that it's increasing; right?  15       <b>A. Yes.</b>  16       Q. And you're supposed to increase the  17       pressure. And you're telling me, "Well, maybe  18       we didn't do that because we're waiting for  19       things to normalize." Is that what you told me?  20       <b>A. That is something that we do.</b>  21       Q. So I'm seeing from 23:49, gosh, until  22       1:49, two hours before the pressure gets  23       increased. You're not trying to say that you  24       were waiting two hours for the maintenance  25       fluids to settle down; are you?</p>
<p style="text-align: right;">Page 91</p> <p>1       Q. How long do you wait for things to  2       regulate before you do what the instructions  3       tell you to do?  4       <b>A. If we're seeing fluctuations in the</b>  5       <b>maintenance fluid or we're hitting bumps in the</b>  6       <b>road or there's turbulence, we will take another</b>  7       <b>set once we stabilized out to see what is</b>  8       <b>actually going on with the heart.</b>  9       Q. So you're telling me that it's routine  10       for you to take a second set of lactates, see  11       that it is increasing, know that your training  12       tells you to increase the pressure, and not do  13       it. That's common for you.  14       MR. BRANTINGHAM: Object to the form of  15       the question.  16       <b>A. I am saying that this is something that</b>  17       <b>is not uncommon to happen.</b>  18       Q. What is something that's not uncommon,  19       for there to be an increasing lactate and for  20       you to not follow your training?  21       MR. BRANTINGHAM: Object to the form of  22       the question.  23       <b>A. For there to be an increasing lactate</b>  24       <b>but multiple things happening in the background</b>  25       <b>and us waiting for a -- for the flows and</b></p>	<p style="text-align: right;">Page 93</p> <p>1       <b>A. What happened in those two hours, I</b>  2       <b>don't know.</b>  3       Q. Are you really trying to suggest to us,  4       under oath, that you think what may have  5       happened is that things were just so crazy and  6       the maintenance fluid was going bananas and we  7       just didn't have an opportunity to increase the  8       pressure?  9       <b>A. No. We did other things.</b>  10       Q. Right. Like continue to check the  11       lactates and see that they were continuing to  12       increase, and you still didn't change the  13       pressure; right?  14       MR. BRANTINGHAM: Object to the form of  15       the question, asked and answered.  16       <b>A. The flows and coron --</b>  17       <b>The pump flows and coronary flows were</b>  18       <b>increased.</b>  19       Q. None of that was my question.  20       How hard is it to increase the  21       pressure?  22       <b>A. It is not hard.</b>  23       Q. It's a little dial; right?  24       <b>A. Yes.</b>  25       Q. And you just turn it; right?</p>

24 (Pages 90 to 93)

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<p style="text-align: right;">Page 94</p> <p>1       <b>A. No. That increases flow.</b></p> <p>2       Q. Okay. How do you change the pressure?</p> <p>3       <b>A. You go into one of the medications and</b></p> <p>4       <b>change the AOP.</b></p> <p>5       Q. Okay. How long does that take?</p> <p>6       <b>A. Twenty, 30 seconds.</b></p> <p>7       Q. Do you have the ability to do that if</p> <p>8       the -- there's turbulence?</p> <p>9       <b>A. Yes.</b></p> <p>10      Q. Do you have the ability to do that if</p> <p>11      Megan Osterhaus is talking to you?</p> <p>12      <b>A. Yes.</b></p> <p>13      Q. Yeah. There's not a lot of impediments</p> <p>14      to being able to increase the pressure, like</p> <p>15      your training told you you were supposed to do</p> <p>16      in this case; right?</p> <p>17      MR. BRANTINGHAM: Object to the form of</p> <p>18      the question, compound question.</p> <p>19      <b>A. It --</b></p> <p>20      <b>We are able to do it off the machine,</b></p> <p>21      <b>yes.</b></p> <p>22      Q. And certainly if you had the ability to</p> <p>23      draw another lactate, you sure as heck had the</p> <p>24      ability to increase the pressure if you had</p> <p>25      wanted to; right?</p>	<p style="text-align: right;">Page 96</p> <p>1       Q. And is there any other path somewhere</p> <p>2       that you're supposed to follow other than this?</p> <p>3       <b>A. There are other factors such as</b></p> <p>4       <b>turbulence, the maintenance fluid, things --</b></p> <p>5       <b>surgeon discretion that would have us not doing</b></p> <p>6       <b>things in this order.</b></p> <p>7       Q. But I thought we established that the</p> <p>8       maintenance fluids and the turbulence don't make</p> <p>9       it so, well, I can change the coronary flow, but</p> <p>10      I can't change the pressure.</p> <p>11      <b>A. But we want to wait for it to stabilize</b></p> <p>12      <b>to know what it's at.</b></p> <p>13      Q. Okay. Having had a chance to go</p> <p>14      through and kind of re-create what was done in</p> <p>15      this case, do you have any concerns whatsoever</p> <p>16      about the way that you handled this OCS run?</p> <p>17      <b>A. The flows, the pressures were all fine.</b></p> <p>18      <b>What Dr. V saw, he was happy with. So the</b></p> <p>19      <b>outcome -- the -- what the heart looked like and</b></p> <p>20      <b>responded to, what we did on the machine, was</b></p> <p>21      <b>all good.</b></p> <p>22      Q. No. What -- what the heart looked like</p> <p>23      was that it was not robust and not very happy on</p> <p>24      the car ride on the way to the hospital in</p> <p>25      Rochester; right?</p>
<p style="text-align: right;">Page 95</p> <p>1       <b>A. Yes.</b></p> <p>2       Q. And you told me a minute ago that you</p> <p>3       were increasing the pulmonary and the cardiac --</p> <p>4       and the coronary flow?</p> <p>5       <b>A. Those were increased, yes.</b></p> <p>6       Q. So if you have the ability to do that,</p> <p>7       of course you have the ability to increase the</p> <p>8       pressure instead; right?</p> <p>9       <b>A. We could have increased the pressure,</b></p> <p>10      <b>yes.</b></p> <p>11      Q. Now back to your training document.</p> <p>12      After the second set shows increasing lactates</p> <p>13      and you increase the pressure, then you're</p> <p>14      supposed to draw that third set of lactates in</p> <p>15      five to ten minutes. We've already established</p> <p>16      you didn't do that. Then you're supposed to see</p> <p>17      if that is showing another increasing lactate;</p> <p>18      right?</p> <p>19      <b>A. Yes.</b></p> <p>20      Q. And if the third set shows increasing</p> <p>21      lactate, that's when you're supposed to start</p> <p>22      monkeying around with the pulmonary flow and the</p> <p>23      coronary flow; right?</p> <p>24      MR. BRANTINGHAM: Form of the question.</p> <p>25      <b>A. Following this path, yes.</b></p>	<p style="text-align: right;">Page 97</p> <p>1       MR. BRANTINGHAM: Hold on. This has --</p> <p>2       this has been asked and answered repeatedly.</p> <p>3       MR. THOMPSON: And now it's in response</p> <p>4       to this answer that she's giving where she says,</p> <p>5       "No, I don't have any concerns about this</p> <p>6       because the heart looked good." I'm entitled to</p> <p>7       follow up on that. If she's claiming that she</p> <p>8       doesn't have any concerns because the heart</p> <p>9       looked good, I guess we got to explore what she</p> <p>10      means by that because she texted her friends</p> <p>11      that the heart didn't look good.</p> <p>12      Q. So I'll take an ans --</p> <p>13      MR. BRANTINGHAM: The transcript will</p> <p>14      speak to what she said. When you start a</p> <p>15      question by shouting "no" at the witness in</p> <p>16      response to their answer, it's a bad sign,</p> <p>17      Brandon.</p> <p>18      MR. THOMPSON: Have you made your</p> <p>19      objection?</p> <p>20      MR. BRANTINGHAM: Yeah, I've made my</p> <p>21      objection.</p> <p>22      MR. THOMPSON: Good.</p> <p>23      Q. I'll take an answer to my question.</p> <p>24      MR. BRANTINGHAM: Form of the question,</p> <p>25      argumentative, badgering the witness.</p>

25 (Pages 94 to 97)

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<p style="text-align: right;">Page 98</p> <p>1 Q. I'll take a --</p> <p>2 MR. BRANTINGHAM: Let's have a -- let's</p> <p>3 have the question read back or you can say it</p> <p>4 again. I would like to know what the question</p> <p>5 is that you're being asked.</p> <p>6 Q. Did you mean to tell me that one of the</p> <p>7 reasons that you don't have any concerns about</p> <p>8 what you did on this run was because the heart</p> <p>9 looked good?</p> <p>10 <b>A. There was no overall concern of how the</b></p> <p>11 <b>heart looked at the end.</b></p> <p>12 Q. Concern from whom?</p> <p>13 <b>A. It didn't appear --</b></p> <p>14 <b>The heart did not appear abnormal, and</b></p> <p>15 <b>Dr. V was happy with the appearance of it when</b></p> <p>16 <b>we brought it in.</b></p> <p>17 Q. How do you know? How do you know he</p> <p>18 was happy with the appearance of it?</p> <p>19 <b>A. Per what I was told in messages, Dr. V</b></p> <p>20 <b>was happy with it.</b></p> <p>21 Q. Well what you were told in messages is</p> <p>22 that Dr. V thought that the lactates looked</p> <p>23 okay; right?</p> <p>24 <b>A. If he wasn't happy with how it looked</b></p> <p>25 <b>in -- when I brought it in, he doesn't have to</b></p>	<p style="text-align: right;">Page 100</p> <p>1 what you said before about how Dr. V, if he</p> <p>2 didn't feel comfortable about the way it looked</p> <p>3 he wouldn't have to transplant it, isn't really</p> <p>4 true; right? He didn't have a choice. He was</p> <p>5 stuck with what you brought him.</p> <p>6 MR. BRANTINGHAM: Object to the form of</p> <p>7 the compound question, and foundation.</p> <p>8 <b>A. I --</b></p> <p>9 <b>Ultimately it's his decision.</b></p> <p>10 Q. Right. But you never told anybody that</p> <p>11 you thought the heart didn't look happy; right?</p> <p>12 <b>A. It --</b></p> <p>13 Q. Except after the fact.</p> <p>14 <b>A. No. The -- I --</b></p> <p>15 <b>The surgeons that were with us could</b></p> <p>16 <b>see the heart. They can see it when they --</b></p> <p>17 <b>they can look at it. If they weren't happy with</b></p> <p>18 <b>it, then they're the ones responsible for --</b></p> <p>19 Q. You also are responsible, according to</p> <p>20 your training, for doing a visual inspection of</p> <p>21 the heart throughout the OCS run to make sure</p> <p>22 that it looks like it's got good contractility;</p> <p>23 right?</p> <p>24 <b>A. And there is nothing that I recall that</b></p> <p>25 <b>did not say -- or appear to me that it did not</b></p>
<p style="text-align: right;">Page 99</p> <p>1 <b>transplant it.</b></p> <p>2 Q. Actually he did, because Noah's heart</p> <p>3 had already been removed and put on the back</p> <p>4 table. Did you know that?</p> <p>5 MR. BRANTINGHAM: Foundation.</p> <p>6 MR. THOMPSON: I'm asking if she knew</p> <p>7 it.</p> <p>8 <b>A. I only deal with the OCS device.</b></p> <p>9 Q. Did you bring the heart into the</p> <p>10 operating room?</p> <p>11 <b>A. I did.</b></p> <p>12 Q. Okay. Did you see that Noah's heart</p> <p>13 had already been removed, or could you not see</p> <p>14 that?</p> <p>15 <b>A. I focus on the OCS device and that</b></p> <p>16 <b>heart.</b></p> <p>17 Q. Yeah.</p> <p>18 <b>A. I don't focus on what the patient --</b></p> <p>19 <b>the donor -- or the recipient -- excuse me --</b></p> <p>20 <b>what they're doing with that patient.</b></p> <p>21 Q. Great. So if I tell you that it's been</p> <p>22 established in this case that Noah's native</p> <p>23 heart had been removed, irreversibly cut out of</p> <p>24 his body and put on the back table before that</p> <p>25 OCS donor heart got into the operating room,</p>	<p style="text-align: right;">Page 101</p> <p>1 <b>have any -- good contractility.</b></p> <p>2 Q. You got to answer my question first</p> <p>3 though.</p> <p>4 It's not just the surgeons'</p> <p>5 responsibility to visually inspect that heart,</p> <p>6 that's part of your responsibility as the OCS</p> <p>7 specialist; right?</p> <p>8 <b>A. We watch the heart, too, yes.</b></p> <p>9 Q. Okay. Did you tell anybody that you,</p> <p>10 as the OCS specialist who is responsible for</p> <p>11 visually inspecting the heart, thought that it</p> <p>12 didn't look robust and it didn't look very</p> <p>13 happy?</p> <p>14 MR. BRANTINGHAM: Object to the form.</p> <p>15 <b>A. The surgeon -- the surgeons that were</b></p> <p>16 <b>with us were happy with how it looked. They</b></p> <p>17 <b>were right there with us. They could see what</b></p> <p>18 <b>we saw. They were happy with it.</b></p> <p>19 Q. That wasn't my question.</p> <p>20 My question was: Did you tell anybody</p> <p>21 that you as the OCS specialist thought that</p> <p>22 heart did not look robust and did not look very</p> <p>23 happy?</p> <p>24 <b>A. There is no one to tell for me.</b></p> <p>25 Q. The surgeons?</p>

26 (Pages 98 to 101)

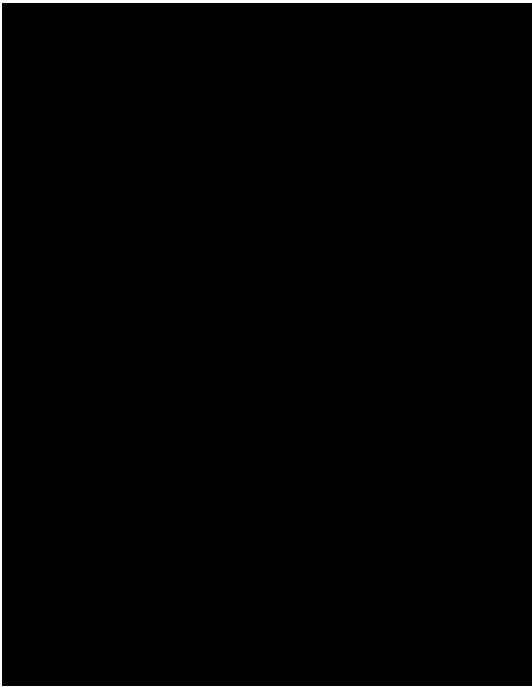


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<p style="text-align: right;">Page 102</p> <p>1       <b>A. And they are right there. They see</b>  2       <b>what I see.</b>  3       Q. Michael Pick who is communicating with  4       Dr. V?  5       <b>A. My --</b>  6       MR. BRANTINGHAM: Hold on. What's that  7       question? I don't -- I don't understand the  8       question.  9       MR. THOMPSON: She said there's nobody  10      for me to tell.  11      Q. How about Michael Pick, the guy who's  12      communicating with Dr. V, --  13      MR. BRANTINGHAM: Yeah.  14      Q. -- could you have told him, "Boy, one  15      of my jobs is to visually inspect this heart,  16      and at least as far as I'm concerned, it does  17      not look happy?"  18      <b>A. The contractility --</b>  19      <b>There was nothing wrong with the</b>  20      <b>contractility that I saw, so there wasn't</b>  21      <b>anything that -- to tell the surgeons. They can</b>  22      <b>see what I can see.</b>  23      Q. Okay. Again I got to return back to my  24      question. You said there's nobody for you to  25      tell. Could you have told Michael Pick, "I, as</p>	<p style="text-align: right;">Page 104</p> <p>1       heart" and you just didn't; right?  2       MR. BRANTINGHAM: Object to the form.  3       <b>A. The surgeons are the ones in charge of</b>  4       <b>the heart while it's on the run. They are the</b>  5       <b>ones that we're talking to, not Dr. V.</b>  6       Q. Is it your testimony that you don't  7       feel like you have any responsibility whatsoever  8       to speak up when you see a heart under your care  9       that you don't think looks robust or happy?  10      <b>A. We give them the data. The -- the</b>  11      <b>surgeons can see the data. They can see what</b>  12      <b>the heart is. They -- we tell them our -- what</b>  13      <b>we see, but ultimately they are in charge of it.</b>  14      Q. Okay. Great. So you just said "we  15      tell them what we see." When did you tell them  16      that what you were seeing was a not robust and a  17      not happy heart?  18      MR. BRANTINGHAM: Object to the form of  19      the question.  20      <b>A. Per my text messages where I said that</b>  21      <b>it was not a happy heart during the car rides,</b>  22      <b>that was due to the turbulence, which corrects</b>  23      <b>itself.</b>  24      Q. Are we really going back to that again?  25      MR. BRANTINGHAM: Hold on a sec.</p>
<p style="text-align: right;">Page 103</p> <p>1       the OCS specialist, do not think this looks like  2       a robust or happy heart?"  3       <b>A. I mean he is there with us and he is</b>  4       <b>also seeing the same thing.</b>  5       Q. His job isn't to do a visual inspection  6       of the heart. His job is to carry tubing in a  7       backpack; right?  8       <b>A. He has lots of jobs.</b>  9       Q. Right. One of his jobs is not to be  10      the OCS specialist; right?  11      <b>A. Correct.</b>  12      Q. Right. So let's stick with your job.  13      Could you have --  14      First of all, did you know Michael Pick  15      was in contact with Dr. V?  16      <b>A. The person on -- that does his job on</b>  17      <b>every run is always in contact.</b>  18      Q. Yeah. So you knew that Michael Pick,  19      out of the five of you that were on that plane,  20      Michael Pick was the one who was in contact with  21      Dr. V; right?  22      <b>A. Him and the two other surgeons, yes.</b>  23      Q. I understand that.  24      You could have told Michael Pick, "Hey,  25      I don't think this looks like a robust or happy</p>	<p style="text-align: right;">Page 105</p> <p>1       Q. You're claiming that was because of  2       turbulence?  3       MR. BRANTINGHAM: Is that -- are you --  4       Is that a serious question?  5       Q. There's no turbulence on the car ride;  6       right?  7       <b>A. I misspoke. Not turbulence. The road</b>  8       <b>conditions, the bumps, the road itself. We hit</b>  9       <b>bumps. That is very common.</b>  10      Q. Okay. So I just want to make sure I  11      got this straight. Your testimony is that the  12      car ride, the roads in between the hospital in  13      Idaho and the airport in Idaho, and from the  14      Rochester airport to St. Mary's, are rough  15      enough that it causes this -- this heart to not  16      look good, but not rough enough to cause any  17      changes in the perfusion parameters that you are  18      constantly monitoring.  19      MR. BRANTINGHAM: Object to the form of  20      the question.  21      <b>A. The hearts will --</b>  22      <b>The -- the flows and pressures that are</b>  23      <b>not documented completely in here, because</b>  24      <b>they're every two minutes, do go out of range</b>  25      <b>for a short period of time when we hit bumps.</b></p>

27 (Pages 102 to 105)

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Page 106	Page 108
<p>1 <b>They correct themselves. That is what we are</b>  2 <b>visualizing on the monitor and that is what I</b>  3 <b>would have meant by it's not a very happy heart</b>  4 <b>during the car ride.</b>  5 Q. What route do you take to get from the  6 airport to the hospital? Because I'm going to  7 go drive it tonight and find out how rough it  8 is. Is it a gravel road?  9 <b>A. No. It is the most direct way to get</b>  10 <b>from the Rochester airport to St. Mary's.</b>  11 Q. So your testimony is that every time we  12 take a heart from the airport in Rochester to  13 the hospital, it's not a very happy looking  14 heart.  15 <b>A. The flows and pressures will alarm out</b>  16 <b>of range for a short period of time whenever we</b>  17 <b>hit any bumps on the road, and it is not</b>  18 <b>uncommon for that to happen during the transit</b>  19 <b>from the hosp -- the airport to the hospital.</b>  20 Q. Okay. And it's your testimony that  21 that road is so bumpy that that happens pretty  22 much every time.  23 MR. BRANTINGHAM: Object to the form.  24 <b>A. I'm saying it happens.</b>  25 Q. Okay. How about when you texted Megan</p>	<p>1 Q. Is it a common thing for you to send  2 text messages like these ones that you sent  3 after this run?  4 <b>A. No.</b>  5 Q. Is this the first time and only time  6 you can think of that that happened?  7 <b>A. As far as I can remember.</b>  8 Q. Your text messages suggest that you had  9 an oral conversation with Mr. Pick about what  10 Dr. V said that the surgeons on the plane had  11 told him about the lactates. Do you remember  12 having a conversation with Michael?  13 <b>A. No.</b>  14 Q. Okay. Look at page 25080.  15 <b>A. (Witness complying.)</b>  16 Q. See your text at that bottom there?  17 <b>A. That was in refer -- that was --</b>  18 Q. To the text message he sent?  19 <b>A. Yes.</b>  20 Q. As far as you know, you never actually  21 had a verbal conversation with Mr. Pick about  22 any of this.  23 <b>A. No.</b>  24 Q. On page 25083 --  25 I assume that you've worked with Dr.</p>
Page 107	Page 109
<p>1 and Alex "The heart was not the most robust on  2 the machine?"  3 <b>A. There is a wide range of how robust or</b>  4 <b>snappy a heart is on the machine and it varies</b>  5 <b>greatly, and it all depends on the heart itself.</b>  6 <b>And I'm saying that it wasn't at the top of the</b>  7 <b>most snappy hearts, but it definitely wasn't at</b>  8 <b>the bottom of the most snappy hearts, it was</b>  9 <b>just -- it was an average heart.</b>  10 Q. How can you say that it was an average  11 heart, it definitely wasn't at the bottom, when  12 you don't remember this at all?  13 <b>A. Because I remember the very, very</b>  14 <b>snappy hearts and I remember the very -- and the</b>  15 <b>hearts that are not -- that we actually have</b>  16 <b>concerns with.</b>  17 Q. Okay. So with respect then to the lack  18 of robustness of this heart, did you communicate  19 that to anyone, that that's what you were seeing  20 on the visual inspection you're supposed to be  21 doing?  22 MR. BRANTINGHAM: Object to the form of  23 the question.  24 <b>A. I do not recall if I said anything to</b>  25 <b>the surgeons that were with me.</b></p>	<p>1 Knop and Dr. Altarabsheh plenty of times since  2 this?  3 <b>A. A few times.</b>  4   5  6  7  8  9  10  11  12  13  14  15  16  17  18  19  20  21  22  23  24  25</p>

28 (Pages 106 to 109)



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<p style="text-align: right;">Page 110</p> <p>1 [REDACTED] 2 [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 [REDACTED] 6 [REDACTED] 7 [REDACTED] 8 [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 [REDACTED] 16 [REDACTED] 17 [REDACTED] 18 [REDACTED] 19 [REDACTED] 20 [REDACTED] 21 [REDACTED] 22 [REDACTED] 23 [REDACTED] 24 [REDACTED] 25 [REDACTED]</p>	<p style="text-align: right;">Page 112</p> <p>1 about this case other than the text messages 2 that you produced? 3 <b>A. He was the one that was supposed to</b> 4 <b>originally go with me, which is the only reason</b> 5 <b>that we talked at all, but no. Other than that,</b> 6 <b>no.</b> 7 Q. Have you ever talked with Alex Reynolds 8 about this case? 9 <b>A. Yes.</b> 10 Q. Tell me about that. 11 <b>A. Alex is in charge of us at our program,</b> 12 <b>and he -- we send all of the data from the</b> 13 <b>machine and everything to him to compile up --</b> 14 <b>compile, and when we found out that the heart</b> 15 <b>wasn't doing well, we wanted the data back to</b> 16 <b>see what it looked like.</b> 17 Q. And near as anybody could tell, the 18 objective data looked good. 19 <b>A. Yes.</b> 20 Q. Ever talk with Michael Pick about this 21 case? 22 <b>A. When he --</b> 23 <b>He was the one that initially asked us</b> 24 <b>for the data from the machine shortly after --</b> 25 <b>well during the time where they were working on</b></p>
<p style="text-align: right;">Page 111</p> <p>1 [REDACTED] 2 Q. Is this the only time you can think of, 3 not just with cases you've been involved in but 4 even just cases that you've heard about where 5 some of your OCS colleagues went on a run that 6 you didn't go on, where there was a heart that 7 was procured, brought back, and ultimately could 8 not be successfully transplanted? 9 <b>A. I can't recall any at our center. I</b> 10 <b>know that it has happened for other OCS</b> 11 <b>TransMedics at other hospitals.</b> 12 Q. How do you know that? 13 <b>A. They told us during our -- during our</b> 14 <b>training that sometimes that happens.</b> 15 Q. Did they give you any idea during your 16 training as to why that happens? 17 <b>A. Sometimes it's because of the lactates.</b> 18 <b>Sometimes the surgeon doesn't like how it has --</b> 19 <b>how the flows and pressures have looked. Those</b> 20 <b>are the main reasons I can think of.</b> 21 Q. What is the farthest that you can 22 remember going on an OCS run? 23 <b>A. The farthest I believe I've been on is</b> 24 <b>either Washington or Arizona area.</b> 25 Q. Have you ever talked with Adam Skow</p>	<p style="text-align: right;">Page 113</p> <p>1 <b>it in the OR, he asked for the data, and what's</b> 2 <b>in the text messages is the only things I've</b> 3 <b>talked to him about.</b> 4 Q. Yep. 5 Do you consider any of your fellow OCS 6 specialists to be friends in addition to 7 colleagues? 8 <b>A. We're friendly, I --</b> 9 <b>We don't hang out.</b> 10 Q. Outside of work. 11 <b>A. Yeah.</b> 12 Q. I asked you before about whether you've 13 talked to Megan Osterhaus about this outside of 14 the text messages that we have, and I think you 15 told me that you haven't talked to her about it 16 at all? 17 <b>A. Most of -- and --</b> 18 <b>I don't recall any specific</b> 19 <b>conversations that I had with her.</b> 20 Q. Probably talked about it at least in 21 general terms, but as to the specifics of it, 22 you can't recall. Is that fair? 23 <b>A. Yeah.</b> 24 Q. Okay. There was another OCS run to go 25 and get another heart for Noah on September 7th.</p>

29 (Pages 110 to 113)

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<p style="text-align: right;">Page 114</p> <p>1 Are you aware of that?</p> <p>2 <b>A. I know that another heart was offered.</b></p> <p>3 <b>I didn't know it was OCS.</b></p> <p>4 Q. Okay. Maybe it wasn't.</p> <p>5 Yeah. Not OCS, so never mind.</p> <p>6 MR. THOMPSON: Okay. Let's take a</p> <p>7 quick break.</p> <p>8 THE REPORTER: Okay. Off the record.</p> <p>9 (Recess taken from 5:05 p.m. to 5:07</p> <p>10 p.m.)</p> <p>11 THE VIDEOGRAPHER: We're on video.</p> <p>12 THE REPORTER: We're on the record.</p> <p>13 BY MR. THOMPSON:</p> <p>14 Q. Once the plane landed in Rochester, who</p> <p>15 on the team would have been the one that called</p> <p>16 doc -- back to the hospital to let Dr. V know</p> <p>17 we're on the ground and the heart still looks</p> <p>18 good?</p> <p>19 <b>A. I don't know whose responsibility that</b></p> <p>20 <b>is.</b></p> <p>21 Q. You just know it wasn't you.</p> <p>22 <b>A. Correct.</b></p> <p>23 MR. THOMPSON: All right. I don't have</p> <p>24 any other questions.</p> <p>25 MR. BRANTINGHAM: Ms. Fay, I have a few</p>	<p style="text-align: right;">Page 116</p> <p>1 mean as you sit here, what can you think of that</p> <p>2 can cause those fluctuations?</p> <p>3 <b>A. There can be fluctuations from</b></p> <p>4 <b>turbulence, from moving the machine during</b></p> <p>5 <b>transport, there's maintenance fluid that helps</b></p> <p>6 <b>regulate and adjust the flows and pressures that</b></p> <p>7 <b>is constantly working in the background. Things</b></p> <p>8 <b>like that.</b></p> <p>9 Q. And I think you -- you were clear that</p> <p>10 not every -- the data on the spreadsheet is not</p> <p>11 continuous, right, it's taken every two minutes.</p> <p>12 <b>A. Correct.</b></p> <p>13 Q. So is it correct that it does not</p> <p>14 actually capture the realtime fluctuations in</p> <p>15 the machine?</p> <p>16 <b>A. That is correct.</b></p> <p>17 Q. Do you always make immediate or even</p> <p>18 really fast adjustments to the machine settings</p> <p>19 in response to fluctuations in pressures, flows,</p> <p>20 lactates, or other metrics?</p> <p>21 <b>A. No. We like --</b></p> <p>22 Q. Why not?</p> <p>23 <b>A. We like to let everything stabilize</b></p> <p>24 <b>out. If we're going over bumpy patches in the</b></p> <p>25 <b>road, it can send the flows and pressures out of</b></p>
<p style="text-align: right;">Page 115</p> <p>1 questions for you.</p> <p>2 EXAMINATION</p> <p>3 BY MR. BRANTINGHAM:</p> <p>4 Q. Start with this, your best estimate or</p> <p>5 recollection, how many OCS runs have you -- have</p> <p>6 you done as a -- in the role that you've been</p> <p>7 talking about here today?</p> <p>8 <b>A. I have done nine or ten that I've</b></p> <p>9 <b>brought back. I would have to look at the exact</b></p> <p>10 <b>number though.</b></p> <p>11 Q. I think you've covered some of these --</p> <p>12 these points in -- in answering Mr. Thompson's</p> <p>13 questions about various adjustments to the OCS</p> <p>14 machine as flows and pressures and other metrics</p> <p>15 changed. You remember answering a lot of</p> <p>16 questions about those topics; right?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. I want to ask you a couple of questions</p> <p>19 just to make sure the record is clear.</p> <p>20 So is it normal for the pressures,</p> <p>21 flows, and other of the many metrics on this</p> <p>22 spreadsheet to fluctuate during a run?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. You've mentioned some of the factors</p> <p>25 that can cause those fluctuations, but rem -- I</p>	<p style="text-align: right;">Page 117</p> <p>1 <b>range, which then the maintenance fluid comes in</b></p> <p>2 <b>and tries to regulate those things, and we don't</b></p> <p>3 <b>want to make a lot of changes during that time</b></p> <p>4 <b>while the maintenance fluid is trying to figure</b></p> <p>5 <b>out what's going on. If there is, during</b></p> <p>6 <b>transit throughout the hospital or moving it up</b></p> <p>7 <b>and -- or out of the plane or takeoff, landing,</b></p> <p>8 <b>any turbulence in the air, it changes all of</b></p> <p>9 <b>those flows and pressures. And until we see</b></p> <p>10 <b>what the heart is actually -- has stabilized --</b></p> <p>11 <b>the flows and pressures have stabilized out,</b></p> <p>12 <b>it's hard to -- we want to make sure that those</b></p> <p>13 <b>stabilize out before we make adjustments to --</b></p> <p>14 <b>in response to that.</b></p> <p>15 Q. What do you think would happen if you,</p> <p>16 for example, just adjusted the pressure on the</p> <p>17 machine in response to every single change in</p> <p>18 one of the metrics?</p> <p>19 <b>A. It would con --</b></p> <p>20 <b>We would constantly have to adjust</b></p> <p>21 <b>those things and it would make it really hard to</b></p> <p>22 <b>know what is helping and what is hindering the</b></p> <p>23 <b>stabilization of the lactates and ultimately</b></p> <p>24 <b>what it's doing to the heart.</b></p> <p>25 Q. Can you hand me that training manual</p>

30 (Pages 114 to 117)

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<p style="text-align: right;">Page 118</p> <p>1 page that Mr. Thompson asked you about?</p> <p>2 <b>A. (Witness complying.)</b></p> <p>3 Q. This is, for the record, Mayo 24575.</p> <p>4 And you remember asking -- answering questions</p> <p>5 about this. Right?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. And this comes from Mayo's OCS Machine</p> <p>8 Manual; is that correct?</p> <p>9 <b>A. That was developed --</b></p> <p>10 <b>Yes, that was developed by Mayo.</b></p> <p>11 Q. Okay. I don't -- I don't have the</p> <p>12 exact words in mind, but I recall you said</p> <p>13 something to the effect of "this is a</p> <p>14 guideline." I think that's the word you used.</p> <p>15 But does that sound correct or --</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. Are there other sources of knowledge,</p> <p>18 training, experience, expertise that you draw on</p> <p>19 in doing an OCS run in handling the machine</p> <p>20 other than what's in this manual?</p> <p>21 <b>A. So the surgeons have also gone out and</b></p> <p>22 <b>they learned about these things as well as the</b></p> <p>23 <b>other people that are with us. So Megan was</b></p> <p>24 <b>with us -- with me. So between me, Megan, the</b></p> <p>25 <b>doctors that are with, we have a combined</b></p>	<p style="text-align: right;">Page 120</p> <p>1 correct?</p> <p>2 <b>A. Correct.</b></p> <p>3 Q. And are those three individuals</p> <p>4 available for you to consult with in regard to</p> <p>5 how to handle the machine, how to respond to any</p> <p>6 changes you're seeing?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. Do you have any hesitancy to consult</p> <p>9 with any of them? I'm just asking in general.</p> <p>10 If there's -- if there's an issue that you're</p> <p>11 wondering about a response to, changes in the</p> <p>12 machine, in the metrics, would you have any</p> <p>13 hesitancy to ask any of those folks what they</p> <p>14 think should be done?</p> <p>15 <b>A. Absolutely not. And I have, on other</b></p> <p>16 <b>cases, gone "I'm not sure what to do here,"</b></p> <p>17 <b>what -- and leaned heavily on the surgeons to</b></p> <p>18 <b>make decisions.</b></p> <p>19 Q. Okay. Looking at this page 24575 under</p> <p>20 the heading "Optimizing Perfusion," I'm just</p> <p>21 going to read the first sentence. It says,</p> <p>22 quote, "Confirming adequacy of perfusion on the</p> <p>23 OCS is mainly done through comparing arterial</p> <p>24 and venous lactate samples and by observing the</p> <p>25 overall trend of lactate," unquote. We all know</p>
<p style="text-align: right;">Page 119</p> <p>1 <b>knowledge base. The doctors are very well</b></p> <p>2 <b>versed in what flows and pressures and what the</b></p> <p>3 <b>heart looks like, what those are comfortable</b></p> <p>4 <b>with. When we went out for training, the people</b></p> <p>5 <b>that were training us were like these are --</b></p> <p>6 <b>they would tell us this is what -- this is what</b></p> <p>7 <b>is -- from my experience, this is what we would</b></p> <p>8 <b>do, this is what we wouldn't to. On our runs</b></p> <p>9 <b>we've met other TransMedics specialists, they</b></p> <p>10 <b>share information with us. We share information</b></p> <p>11 <b>amongst ourselves on what works and what doesn't</b></p> <p>12 <b>work and what to try and what not to try.</b></p> <p>13 Q. So are you, in your view, based on your</p> <p>14 training and experience, are you required -- or</p> <p>15 it is medically required or necessary that you</p> <p>16 follow every single step in this training manual</p> <p>17 robotically?</p> <p>18 <b>A. No.</b></p> <p>19 Q. I think you alluded to this, but to be</p> <p>20 clear, on the OCS run that we're talking about</p> <p>21 here for this patient, you were accompanied by</p> <p>22 two surgeons; right?</p> <p>23 <b>A. Correct.</b></p> <p>24 Q. And by Megan Osterhaus, who's another</p> <p>25 person with your same position and training;</p>	<p style="text-align: right;">Page 121</p> <p>1 that after this complication occurred with the</p> <p>2 surgery, you and Alex and others gathered the</p> <p>3 data to look at. That's what these text</p> <p>4 messages were about. Right?</p> <p>5 <b>A. Correct.</b></p> <p>6 Q. Based on what you know, was the overall</p> <p>7 trend of lactate acceptable for this heart?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. The next sentence says, quote, "In</p> <p>10 broad terms the OCS specialist would like to</p> <p>11 see," unquote, and then it sets forth some of</p> <p>12 the -- some of the items that Mr. Thompson was</p> <p>13 asking about. What does that phrase, "In broad</p> <p>14 terms the OCS Specialist would like to see" mean</p> <p>15 to you?</p> <p>16 <b>A. Ideally if we can accomplish those</b></p> <p>17 <b>things, that is what we want. But just because</b></p> <p>18 <b>we don't see all of those things or those things</b></p> <p>19 <b>don't happen doesn't mean that it's not a good</b></p> <p>20 <b>heart.</b></p> <p>21 Q. What does that last bullet point under</p> <p>22 that section say?</p> <p>23 <b>A. "Inform surgeon if total lactate</b></p> <p>24 <b>exceeds 5."</b></p> <p>25 Q. Did the lactate for this heart ever get</p>

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<p style="text-align: right;">Page 122</p> <p>1 anywhere close to five?</p> <p>2 <b>A. No.</b></p> <p>3 Q. You answered a lot of questions about</p> <p>4 the appearance of this heart and -- and words</p> <p>5 like "robust" and "happy." If you had any</p> <p>6 concern about the appearance of a heart on an</p> <p>7 OCS machine that -- that you thought, based on</p> <p>8 your knowledge and training, raised a concern</p> <p>9 for the viability or suitability of that heart,</p> <p>10 what would you do about it?</p> <p>11 <b>A. The surgeons are right there with us on</b></p> <p>12 <b>the flight. I am in constant communication with</b></p> <p>13 <b>them. They are right there with me. I could</b></p> <p>14 <b>bring my concern straight to them and get their</b></p> <p>15 <b>opinion, and they make -- they -- they are well</b></p> <p>16 <b>more -- they see hearts beating all the time,</b></p> <p>17 <b>they know what -- what looks good more than I</b></p> <p>18 <b>do, so ultimately I would lean on them for their</b></p> <p>19 <b>judgement.</b></p> <p>20 Q. Would you have had any hesitation in</p> <p>21 this case, on this run, if there had been</p> <p>22 something about the appearance of this heart</p> <p>23 that gave you concern, would you have raised it</p> <p>24 with the surgeons?</p> <p>25 <b>A. Absolutely.</b></p>	<p style="text-align: right;">Page 124</p> <p>1 surgeons before?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. Okay. Tell me when.</p> <p>4 <b>A. If we are not able to start seeing that</b></p> <p>5 <b>stabilization in the lactate trend, or if for</b></p> <p>6 <b>some reason the heart isn't beating with the</b></p> <p>7 <b>pacers as it should, those are two examples I</b></p> <p>8 <b>can think of right off that I have woken the</b></p> <p>9 <b>surgeons up from previously.</b></p> <p>10 Q. Okay. Did those two things happen on</p> <p>11 the same run?</p> <p>12 <b>A. No. They were on different runs.</b></p> <p>13 Q. Because you told me that total -- or</p> <p>14 you told Mr. Brantingham total you've been on</p> <p>15 maybe nine or ten of these runs in your entire</p> <p>16 career?</p> <p>17 <b>A. Correct.</b></p> <p>18 Q. Okay. So on at least two --</p> <p>19 Let's just go with ten because it's a</p> <p>20 round number. Okay? Comfortable with that?</p> <p>21 <b>A. Sure.</b></p> <p>22 Q. So on at least two of those ten runs</p> <p>23 there were problems that required you to wake up</p> <p>24 the surgeons?</p> <p>25 <b>A. They --</b></p>
<p style="text-align: right;">Page 123</p> <p>1 Q. Would you have woken them up if you</p> <p>2 needed to?</p> <p>3 <b>A. Absolutely.</b></p> <p>4 Q. Is it normal for the surgeons to sleep</p> <p>5 on the flight sometimes, by the way?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. Is there any problem with that in your</p> <p>8 view based on everybody's responsibilities?</p> <p>9 <b>A. No, because they're right there and I</b></p> <p>10 <b>can wake them up and have woke them up if I have</b></p> <p>11 <b>any issues.</b></p> <p>12 Q. So based on everything you've heard</p> <p>13 today, everything you know thus far, do you feel</p> <p>14 that you handled this heart appropriately and</p> <p>15 this -- this OCS run appropriately?</p> <p>16 <b>A. I feel that everything from that run,</b></p> <p>17 <b>from the time we got it on to the time it came</b></p> <p>18 <b>off, it looked good. I had no concerns. It was</b></p> <p>19 <b>a complete blindside that there was anything</b></p> <p>20 <b>wrong with it after it came off the machine.</b></p> <p>21 MR. BRANTINGHAM: Okay. I have no</p> <p>22 further questions.</p> <p>23 EXAMINATION</p> <p>24 BY MR. THOMPSON:</p> <p>25 Q. You said that you have woken up the</p>	<p style="text-align: right;">Page 125</p> <p>1 <b>Whether they were asleep or not I don't</b></p> <p>2 <b>recall; but informing them that there was an</b></p> <p>3 <b>issue that needed their attention, yes.</b></p> <p>4 Q. Well let's -- let's stick, though, with</p> <p>5 what you told Mr. Brantingham. You didn't tell</p> <p>6 Mr. Brantingham that you have informed them of</p> <p>7 issues in the past. You told him that there are</p> <p>8 times when you have physically woken up the</p> <p>9 surgeons to talk with them. Is that your</p> <p>10 testimony under oath?</p> <p>11 <b>A. I have, in the past, woken surgeons up</b></p> <p>12 <b>for -- for an issue, yes.</b></p> <p>13 Q. On an OCS run.</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. Okay. How many times?</p> <p>16 <b>A. I don't recall an exact number by any</b></p> <p>17 <b>means.</b></p> <p>18 Q. Well you've only been on ten of these</p> <p>19 runs. So is it more than once that you've</p> <p>20 actually physically woken up a surgeon?</p> <p>21 <b>A. I don't recall if they were awake or if</b></p> <p>22 <b>they were not awake when I informed them.</b></p> <p>23 Q. Okay. Well let's stick with waking</p> <p>24 them up, because you testified previously that</p> <p>25 you could think of times when you have had to</p>

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<p style="text-align: right;">Page 126</p> <p>1 wake up the surgeons and you've done that. Mr.</p> <p>2 Brantingham asked you, "Would you wake them up</p> <p>3 if you had to?" And you said, "Absolutely, and</p> <p>4 I have." So let's talk about that. When did it</p> <p>5 happen?</p> <p>6 <b>A. I don't recall the specific problem</b></p> <p>7 <b>that I woke them up for.</b></p> <p>8 Q. But you're testifying, under oath, that</p> <p>9 you are certain that there was at least one time</p> <p>10 when you woke up a surgeon because you were so</p> <p>11 concerned about what you were seeing.</p> <p>12 <b>A. Where I would --</b></p> <p>13 <b>I woke up a surgeon to talk with them</b></p> <p>14 <b>because -- I don't remember the problem, but to</b></p> <p>15 <b>get their input on what we should do, yes.</b></p> <p>16 Q. But you don't remember what the problem</p> <p>17 was.</p> <p>18 <b>A. I do not.</b></p> <p>19 Q. Not even generally.</p> <p>20 I mean it had to be a pretty big</p> <p>21 problem if you woke up the surgeon; right?</p> <p>22 MR. BRANTINGHAM: Object to the form of</p> <p>23 the question.</p> <p>24 <b>A. We can --</b></p> <p>25 <b>I don't have any issues waking them up,</b></p>	<p style="text-align: right;">Page 128</p> <p>1 <b>A. I don't have -- they're --</b></p> <p>2 <b>We're with them for many hours at a</b></p> <p>3 <b>time. I -- it does not bother me to go wake</b></p> <p>4 <b>them up.</b></p> <p>5 Q. I didn't ask if it bothered you. I'm</p> <p>6 asking you you can agree with me that those are</p> <p>7 two very different things.</p> <p>8 <b>A. I can --</b></p> <p>9 <b>No, I would say that I am just as</b></p> <p>10 <b>comfortable waking them up as I am just asking</b></p> <p>11 <b>for their opinion.</b></p> <p>12 Q. Okay. So give me an example of</p> <p>13 something where you -- it wasn't that big of a</p> <p>14 deal, but it was a big enough deal that you</p> <p>15 wanted to ask the surgeon for their input and</p> <p>16 they were awake. Give me an example.</p> <p>17 MR. BRANTINGHAM: Object to the form of</p> <p>18 the question.</p> <p>19 <b>A. Where the heart wasn't capturing on the</b></p> <p>20 <b>machine consistently.</b></p> <p>21 Q. What do you mean, capturing what?</p> <p>22 <b>A. The heart rate.</b></p> <p>23 Q. Okay. Was that a time when you think</p> <p>24 you woke a surgeon up, or just they were already</p> <p>25 awake?</p>
<p style="text-align: right;">Page 127</p> <p>1 <b>so how serious it was, I don't recall.</b></p> <p>2 Q. Who was the surgeon?</p> <p>3 <b>A. That I woke up?</b></p> <p>4 Q. Yeah.</p> <p>5 <b>A. I -- I don't recall which surgeons I've</b></p> <p>6 <b>woken up and which surgeons I have just said,</b></p> <p>7 <b>"Hey, I need your help with something."</b></p> <p>8 Q. Well and that's --</p> <p>9 I mean it's a very different thing.</p> <p>10 There's a surgeon who's --</p> <p>11 I mean it's a small airplane; right?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. Okay. So it --</p> <p>14 You would agree with me it's a very</p> <p>15 different thing. There's a surgeon sitting</p> <p>16 there awake, maybe he's doing a crossword puzzle</p> <p>17 or something, I don't know, and you say "Hey,</p> <p>18 doc, what do you think about this?" That's a</p> <p>19 way different thing than going over to a</p> <p>20 board-certified cardiac surgeon, who is deep in</p> <p>21 sleep, and waking them up to ask them a</p> <p>22 question. You can agree those are two very</p> <p>23 different things; right?</p> <p>24 MR. BRANTINGHAM: Object to the form.</p> <p>25 You can answer.</p>	<p style="text-align: right;">Page 129</p> <p>1 <b>A. That particular time that I can think</b></p> <p>2 <b>of it was -- they were awake.</b></p> <p>3 Q. How long did you wait in between the</p> <p>4 time you noticed the problem and the time when</p> <p>5 you talked to the surgeon about it?</p> <p>6 <b>A. They were right there with me. They</b></p> <p>7 <b>knew about it at the same time I did, and I</b></p> <p>8 <b>literally showed them the screen and -- and told</b></p> <p>9 <b>them, "Hey, this isn't capturing."</b></p> <p>10 Q. So it was like seconds.</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. Okay. Are you telling me that if that</p> <p>13 same problem had happened, within seconds you</p> <p>14 would have woken up a sleeping surgeon?</p> <p>15 <b>A. I --</b></p> <p>16 <b>Yeah.</b></p> <p>17 Q. Okay. Give me another example of a</p> <p>18 time when you have sought a surgeon's input on</p> <p>19 one of these ten OCS runs you've been on.</p> <p>20 <b>A. On whether the --</b></p> <p>21 <b>The coronary flows were on the higher</b></p> <p>22 <b>side, and if they wanted us to keep going up on</b></p> <p>23 <b>the pressures or if they wanted us to just</b></p> <p>24 <b>maintain where we are.</b></p> <p>25 Q. The surgeon was already awake?</p>

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<p>1 <b>A. I don't recall if the surgeon was awake</b></p> <p>2 <b>during that or not.</b></p> <p>3 Q. Who was the surgeon?</p> <p>4 <b>A. His first name's Choi. I -- I don't</b></p> <p>5 <b>remember his last name. He no longer works at</b></p> <p>6 <b>Mayo.</b></p> <p>7 Q. Of the ten, roughly, OCS runs you've</p> <p>8 been on, how many of them are during the day and</p> <p>9 how many at night?</p> <p>10 <b>A. I would say roughly 50/50.</b></p> <p>11 Q. Do the surgeons routinely sleep on the</p> <p>12 day runs, too?</p> <p>13 <b>A. It's not uncommon.</b></p> <p>14 Q. Okay. Well I mean, again, I thought we</p> <p>15 were going to talk about like a hundred of</p> <p>16 these, but there's only ten of them.</p> <p>17 So of the 50 percent, so maybe five</p> <p>18 runs during the day that you've gone on in your</p> <p>19 entire career? Is that about right?</p> <p>20 <b>A. Roughly. Yeah.</b></p> <p>21 Q. Okay. Surgeons sleeping on most of</p> <p>22 them? Four of them? Three of them? Two of</p> <p>23 them? Give me your best estimate.</p> <p>24 <b>A. I don't know right off.</b></p> <p>25 Q. Okay. Of these ten-or-so runs that</p>	<p>1 communication with the surgeons on these runs.</p> <p>2 That's not the case on the run you did for</p> <p>3 Noah's heart; right? You weren't in constant</p> <p>4 communication with them.</p> <p>5 <b>A. If I needed them, they're right there.</b></p> <p>6 Q. Yeah. But --</p> <p>7 <b>A. I can wake them up.</b></p> <p>8 Q. But only if you wake them up.</p> <p>9 <b>A. But I have no problem waking them up.</b></p> <p>10 Q. Why didn't you wake them up then to ask</p> <p>11 them, after the third rising lactate, whether</p> <p>12 you should follow your training and increase the</p> <p>13 pressure?</p> <p>14 MR. BRANTINGHAM: Object to the form.</p> <p>15 <b>A. I don't recall.</b></p> <p>16 Q. Okay. Because one of the things you</p> <p>17 told Mr. Brantingham was that, well, this</p> <p>18 training is -- it's just a guideline, we also</p> <p>19 have the surgeons' input and Megan's input and</p> <p>20 kind of other resources. Did you ask Megan,</p> <p>21 "Hey, this is the third rising lactate. Do you</p> <p>22 think maybe we should increase the pressure?"</p> <p>23 <b>A. Megan and I were both running the</b></p> <p>24 <b>lactate -- lactates and controlling it at the</b></p> <p>25 <b>same time. We were working together.</b></p>
Page 131	Page 133
<p>1 you've been on, how many of them had really</p> <p>2 nice, snappy hearts?</p> <p>3 <b>A. There is really only one that I can</b></p> <p>4 <b>think of that is -- stands out as being very</b></p> <p>5 <b>snappy.</b></p> <p>6 Q. Describe for me what you mean by that.</p> <p>7 <b>A. Where the contractility is so strong</b></p> <p>8 <b>that it's almost -- that it's almost coming off</b></p> <p>9 <b>the -- the machine, the base.</b></p> <p>10 Q. Okay. How many really not snappy</p> <p>11 hearts have you seen?</p> <p>12 <b>A. There is really only one that I can</b></p> <p>13 <b>think of that was -- that I would describe as</b></p> <p>14 <b>that.</b></p> <p>15 Q. Describe it for me.</p> <p>16 <b>A. Just more sluggish.</b></p> <p>17 Q. Did the surgeon seem concerned about</p> <p>18 the fact that this heart was so sluggish?</p> <p>19 <b>A. They weren't overall concerned because</b></p> <p>20 <b>everything else looked okay.</b></p> <p>21 Q. Was this one of those runs where they</p> <p>22 were sleeping?</p> <p>23 <b>A. I don't recall.</b></p> <p>24 Q. One of the things you told Mr.</p> <p>25 Brantingham was that you're in constant</p>	<p>1 Q. So it wasn't just you who wasn't</p> <p>2 following her training, it was also Megan.</p> <p>3 MR. BRANTINGHAM: Object to the form of</p> <p>4 the question.</p> <p>5 <b>A. We -- we were both seeing the same</b></p> <p>6 <b>thing.</b></p> <p>7 Q. Rising lactates, is that what you're</p> <p>8 referring to when you're saying "we're both</p> <p>9 seeing the same thing?"</p> <p>10 <b>A. We are both looking at the same flows,</b></p> <p>11 <b>the same pressures, the same -- everything we're</b></p> <p>12 <b>doing together.</b></p> <p>13 Q. Yeah. Why did you leave out lactates</p> <p>14 when you just said the things that you're</p> <p>15 looking at?</p> <p>16 <b>A. The lactates.</b></p> <p>17 Q. Right. So both of you were seeing the</p> <p>18 rising lactates.</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. Do you know how many of these runs</p> <p>21 Megan Osterhaus has been on?</p> <p>22 <b>A. I do not.</b></p> <p>23 Q. Is your sense that she is more or less</p> <p>24 experienced than you?</p> <p>25 <b>A. I know she has been on more than I</b></p>

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<p style="text-align: right;">Page 134</p> <p>1 <b>have.</b></p> <p>2 Q. When was the first OCS run you went on?</p> <p>3 <b>A. I believe it was in November two years</b></p> <p>4 <b>ago.</b></p> <p>5 Q. November 2022?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. When is the last one that you went on?</p> <p>8 <b>A. About a week and a half ago.</b></p> <p>9 Q. The time before that?</p> <p>10 <b>A. April.</b></p> <p>11 Q. Time before that?</p> <p>12 <b>A. December.</b></p> <p>13 Q. December of '23?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. Time before that?</p> <p>16 <b>A. This one.</b></p> <p>17 Q. This one.</p> <p>18 The time before that?</p> <p>19 <b>A. I had a few of them the last summer,</b></p> <p>20 <b>but the exact dates, I -- or when, I don't</b></p> <p>21 <b>recall right off.</b></p> <p>22 Q. Okay. So November of 2022, was that</p> <p>23 the only one you think you went on in 2022?</p> <p>24 <b>A. I can't recall. I would have to look</b></p> <p>25 <b>back.</b></p>	<p style="text-align: right;">Page 136</p> <p>1 Q. Collaboration with who, with Megan?</p> <p>2 <b>A. With Megan, with the surgeons when they</b></p> <p>3 <b>could see it.</b></p> <p>4 Q. Well at what point were you</p> <p>5 collaborating with the surgeons? Because the</p> <p>6 text messages you sent sure seem to indicate</p> <p>7 that they were sleeping for almost the entire</p> <p>8 flight.</p> <p>9 <b>A. But they weren't sleeping the entire</b></p> <p>10 <b>flight.</b></p> <p>11 Q. Okay. So the collaboration --</p> <p>12 What was the collaboration with them</p> <p>13 then? When they were awake, what was happening?</p> <p>14 <b>A. They asked for our flows, our</b></p> <p>15 <b>pressures, our lactate trends. They -- we asked</b></p> <p>16 <b>them are they happy with what we're doing, if</b></p> <p>17 <b>they want us to do something different. We</b></p> <p>18 <b>asked them for their opinion.</b></p> <p>19 Q. You keep saying "them." Were they both</p> <p>20 awake at the same time?</p> <p>21 <b>A. They --</b></p> <p>22 <b>Yes, they -- they were awake.</b></p> <p>23 Q. Well they were both sleeping for most</p> <p>24 of the plane ride; right?</p> <p>25 <b>A. They were sleeping during the plane</b></p>
<p style="text-align: right;">Page 135</p> <p>1 Q. Okay. Do you remember going on one</p> <p>2 around the time of the Christmas holidays?</p> <p>3 <b>A. I don't recall.</b></p> <p>4 Q. Okay. So even if we estimate on the</p> <p>5 high side that you've done ten of these, you</p> <p>6 really had only gone on five or six of these</p> <p>7 runs before the one you did for Noah Leopold's</p> <p>8 heart; right?</p> <p>9 <b>A. Roughly.</b></p> <p>10 Q. Mr. Brantingham asked you whether you</p> <p>11 felt like you need to just robotically follow</p> <p>12 this training manual, and you said, no, I don't</p> <p>13 feel like I have to robotically follow that. Do</p> <p>14 you remember that?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. Okay. Do you feel like you have to at</p> <p>17 least generally follow it?</p> <p>18 <b>A. In general, yes.</b></p> <p>19 Q. Do you feel like you, in general, did</p> <p>20 follow this management strategy for rising</p> <p>21 lactates?</p> <p>22 <b>A. I would say collaboration was -- we</b></p> <p>23 <b>made -- we talked through what was going on and</b></p> <p>24 <b>very generally followed it, but not</b></p> <p>25 <b>specifically.</b></p>	<p style="text-align: right;">Page 137</p> <p>1 <b>ride, yes.</b></p> <p>2 Q. I mean we can go back to the texts.</p> <p>3 You said they were sleeping most of the ride.</p> <p>4 <b>A. What I meant by "most," I don't know.</b></p> <p>5 Q. Okay. When they were awake, best you</p> <p>6 can remember, was it just one of them or was it</p> <p>7 both of them that woke up?</p> <p>8 <b>A. They both are typically awake, but some</b></p> <p>9 <b>of them -- sometimes they can -- one can be</b></p> <p>10 <b>asleep and one can be awake.</b></p> <p>11 Q. What do you mean when you say "they</p> <p>12 both can typically be awake?"</p> <p>13 <b>A. They don't fall asleep as soon as we</b></p> <p>14 <b>get on the plane.</b></p> <p>15 Q. How long after you got on the plane did</p> <p>16 those guys fall asleep?</p> <p>17 <b>A. I don't recall.</b></p> <p>18 MR. THOMPSON: Okay. I don't have any</p> <p>19 other questions. Thank you.</p> <p>20 MR. BRANTINGHAM: No further questions</p> <p>21 from me. We'll read and sign.</p> <p>22 THE REPORTER: Okay. Thank you. Off</p> <p>23 the record.</p> <p>24 (Discussion off the record.)</p> <p>25 MR. THOMPSON: Following --</p>

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<p style="text-align: right;">Page 138</p> <p>1 So two things. Number one, for some 2 reason this witness was never identified, and we 3 only found her because of these text messages 4 that you sent. She was never identified in 5 initial disclosures. All the initial 6 disclosures say is medical personnel who are in 7 Noah Leopold's medical records. Danielle Fay 8 doesn't appear in Noah Leopold's medical record, 9 literally had no idea that this woman existed. 10 Now today, for the first time, we are finding 11 out that Megan Osterhaus was on that plane, that 12 she was one of the other OCS specialists. She 13 appears nowhere in the medical record. We have 14 never been given any notice that that is a 15 person who has discoverable information. I'm a 16 little bit perplexed by that. So -- 17 I mean I think the way that we deal 18 with it, obviously, is we're going to depose 19 Osterhaus. But my question for you is: Are 20 there other people that have relevant 21 information about this case? I mean you don't 22 have to disclose confidences, obviously, but are 23 there like other people that have like come up 24 in your discussions? 25 MR. BRANTINGHAM: I thought we were --</p>	<p style="text-align: right;">Page 140</p> <p>1 these witnesses, whatever. 2 MR. THOMPSON: For sure. And I -- I 3 feel like at this point we've probably -- we've 4 got a pretty good idea of who the players are, 5 but I just wanted to confirm that there was no 6 one else that at least you were aware of. 7 MR. BRANTINGHAM: I am not aware of 8 anyone. It is very rare that there are people 9 who are involved in the care of a patient that 10 don't actually pop up in the medical record. 11 MR. THOMPSON: I know. 12 MR. BRANTINGHAM: But the -- the facts 13 of this case are very unusual in terms of the 14 discovery. 15 MR. THOMPSON: Maybe one of the 16 things -- and I'll follow up just with an email 17 on this -- it would be nice to know who the 18 folks were that went on that September 7th -- 19 Oh, no. That wasn't an OCS run. We 20 got that. 21 Okay. All right. Sounds good. I'm 22 done making my record. 23 THE REPORTER: Off the record. 24 (Deposition concluded at 5:39 p.m.) 25</p>
<p style="text-align: right;">Page 139</p> <p>1 There was no one else on the plane, 2 that's for sure. There was no one else on the 3 plane. 4 MR. THOMPSON: Well except the pilot. 5 MR. BRANTINGHAM: Well, sure, except 6 the pilot, presumably. 7 Quite frankly we weren't aware of their 8 role when we did the initial disclosures. 9 MR. THOMPSON: Yeah. 10 MR. BRANTINGHAM: And moreover, we 11 don't -- 12 You know, initial disclosures require 13 disclosure of who you plan to use to support 14 your case. That can be amended as we go, and we 15 all learn from it, so we know about them now. I 16 don't know of someone else -- as I sit here 17 right now, I can't think of someone who seems 18 particularly relevant, -- 19 MR. THOMPSON: Okay. 20 MR. BRANTINGHAM: -- but, you know, 21 we'll supplement our discovery as -- as 22 required. 23 MR. THOMPSON: Okay. 24 MR. BRANTINGHAM: I mean I think you 25 know about -- I mean you certainly -- ask of</p>	<p style="text-align: right;">Page 141</p> <p>1 C E R T I F I C A T E 2 I, Nicole A. Huber, hereby certify that 3 I am qualified as a verbatim shorthand reporter; 4 that I took in stenographic shorthand the 5 testimony of DANIELLE FAY at the time and place 6 aforesaid; and that the foregoing transcript 7 consisting of 140 pages is a true and correct, 8 full and complete transcription of said 9 shorthand notes, to the best of my ability. 10 Dated at Baxter, Minnesota, this 23rd 11 of August, 2024. 12 13 14 15 16 NICOLE A. HUBER 17 Notary Public 18 19 20 21 22 23 24 25</p>

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1                   SIGNATURE PAGE  
2       I, DANIELLE FAY, the deponent, hereby  
3       certify that I have read the foregoing  
4       transcript, consisting of 140 pages, and that  
5       said transcript is a true and correct, full and  
6       complete transcription of my deposition, except  
7       per the attached corrections, if any.  
8       PAGE LINE    CHANGE/REASON FOR CHANGE  
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17      \_\_\_\_\_  
18      \_\_\_\_\_  
19        Date           Signature of Witness  
20  
21                   WITNESS MY HAND AND SEAL this \_\_\_\_  
22                   day of \_\_\_\_\_, 2024.  
23  
24       (NAH)       \_\_\_\_\_  
25

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